

**In the Matter of an Arbitration under Section 25(1) of *The Trade Union Act***

**Between:**

**The Saskatchewan Government and General Employees' Union**

**and**

**The Government of Saskatchewan (Ministry of Corrections, Public Safety and Policing)**

Representing the Union:           Juliana Saxberg and Larry Buchinski  
Representing the Employer:       Carol Kraft and Samantha Beaudry

Award:           February 11, 2013

**Award**

**I.     Introduction**

1. On October 27, 2009, Saskatchewan Government and General Employees' Union ("SGEU" or the "Union") filed Grievance No. 2008 073 132R (the "Grievance") on behalf of Leigh Longman ("Longman" or the "Grievor") against the Ministry of Corrections, Public Safety and Policing (the "Employer" or "Corrections" or the "Ministry").
2. The Union filed the Grievance with respect to the termination of Longman's employment at the Regina Provincial Correctional Centre (the "RPCC" or the "Centre") on October 15, 2008. The Grievance was filed pursuant to the Collective Bargaining Agreement between the Employer and SGEU in force between October 1, 2006 and September 30, 2009 (the "CBA"). The parties agree this is the relevant CBA.
3. The Union referred the Grievance to arbitration by letter of March 17, 2009. The parties agreed that I would sit as single Arbitrator for the case.
4. At the outset, the parties acknowledged I had been properly constituted as sole Arbitrator and I have jurisdiction to hear and determine the Grievance. The parties also agreed to exclusion of witnesses.
5. Juliana Saxberg and Larry Buchinski represented the Union.
6. Carol Kraft and Samantha Beaudry represented the Employer.

7. Employer witnesses included Mark McFadyen, Robert MacLean, Lorne Zimmer, Julien Hulet and Heather Scriver.
8. Union witnesses included Leigh Longman, Michael Cummings and Shane Osberg.
9. The parties agreed that should I uphold the grievance and order that the Grievor be reinstated, I would remain seized of any outstanding matters and would allow the parties an opportunity to work out the monetary and other consequences of my award, failing which they would appear before me to resolve any outstanding issues.
10. Longman, a female First Nations Corrections Worker at the RPCC, was dismissed from her employment on October 15, 2008 for reasons outlined in a letter of termination delivered to her that day.
11. SGEU filed the Grievance on October 27, 2008. The Statement of Grievance says:  

Unjust termination – based on unfounded information. Employer has failed to conduct an appropriate investigation. Employer has failed to provide full disclosure of all relevant documents.
12. The remedy sought is:  

Full redress including but not limited to reinstatement, to position of CW1, payment of loss wages, benefits, replacement of lost seniority.
13. The CBA contains a three-step grievance process. The Employer denied the Grievance at Step 1 and Step 2. The Union referred the matter to arbitration.

## **II. The Evidence**

14. I have prepared a detailed Summary of Evidence, largely in chronological order to provide the best understanding of the evidence in the context of the events.

2004	Longman	<p>Leigh Longman, the Grievor, began working at the RPCC as a corrections worker in 2004. She did a practicum at the RPCC in 2000 and it took her four years to finally get a job there.</p> <p>Longman has a Bachelor of Indian Social Work degree.</p> <p>Longman found the work situation challenging in the beginning. She didn't have to pay for classes because she already had a degree, but others called her a "dumb fucking Indian, you get everything for free."</p> <p>During her second year at the RRCC, a fire extinguisher fell on Longman's head. Longman's head was bleeding. The woman Longman was relieving radioed that Longman needed to go to emergency. The nurses refused to come to Longman's aid. She had to walk to the nurse's station and then drive herself to a medical clinic.</p> <p>Longman had to sit through racist jokes. Longman's co-worker Gloria, who has since passed away, told Longman to be quiet and not let it bug her and she would get used to it. Longman said good morning to one of the other</p>
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		<p>workers every morning and he didn't respond. Eventually one day he said, "I don't like fucking Indians and I'm not going to start now." Longman didn't complain about these things because she had been told stories about other guards who were "rats" being beaten and having their tires slashed after hours.</p> <p>One day when Longman returned to her desk after doing a range check, someone had changed her screen saver to say "My Indian Name is Runs with Beers." Longman reported this incident to RPCC Director Julien Hulet who made the men who did this come into the office and apologize. After she reported the incident, Longman got an even rougher time.</p> <p>Longman is from the Muscowegan First Nation. She identified herself as First Nation. About 80 per cent of the inmates at the RPCC at any given time are First Nations. There are very few First Nations or Metis staff at the RPCC, maybe 5 out of about 400. Longman already knew some of the other First Nations staff before she came to work at RPCC because of events and gatherings where they had met.</p> <p>Longman also found that sometimes she knew of some of the inmates who were in the RPCC. During her training, the trainers told Longman the policy required reporting of relationships with current or ex-partners or family members. No one ever said you had to report the names of anyone you knew. The father of her children ended up in the RPCC at one point. Longman reported this to her supervisor and they made sure she didn't work on the unit where the man was placed.</p> <p>On cross-examination, Longman confirmed that during training nobody said anything about just knowing someone meeting the definition of relationship. Longman acknowledged she probably read the policy at the time, but she doesn't specifically remember reading it.</p>
May 1	McFadyen	<p>Mark McFadyen is the Deputy Director of Operations of Adult Corrections at the Regina Correctional Centre. McFadyen had received information that Leigh Longman may be in a relationship with a known offender. Longman had also been caught sleeping during a shift at work.</p> <p>Corrections Division Policy 0020 requires an employee to report any relationship to the employer. The policy is important because relationships can cause conflict of interest or breach of security. Situations do happen where a worker has a family member or friend in the system. By requiring that the relationship be reported, management makes it possible for arrangements to be made to accommodate the relationship between the offender and the worker. The policy does not prohibit relationships.</p> <p>The Centre has a Security Intelligence Unit. The unit is responsible to help the Centre manage gang activities. The Intelligence Unit brings information about inmates and staff "from the street".</p> <p>The information about the possible relationship came from the Intelligence Unit through information from the police community. McFadyen believes</p>

		<p>the information came to him through Lorne Zimmer who was a Security Intelligence Officer around that time, but it may have been Dave Cody.</p> <p>McFadyen wanted to question Longman to either approve or disprove the information because he must follow up when he receives this kind of information. McFadyen met with Longman on May 1, 2008. He does not remember whether he told Longman the source of the information about a possible relationship, and said he may or may not have told her the source was an anonymous call from the community.</p> <p>When McFadyen spoke to Longman on May 1 she said she knew the person but that she had no relationship. When asked if he recalled Longman telling him she was going through family court at the time and there was an individual in the community who wished to harm Longman's position, McFadyen said Longman might have said that, but he doesn't recall it. McFadyen was satisfied with Longman's response at the time and felt Longman could carry on with her work as a corrections worker. McFadyen remembers reminding Longman about the relationship policy, but he doesn't believe they discussed the policy in any detail. He doesn't remember if he discussed with Longman what might amount to a relationship for purposes of the policy.</p> <p>McFadyen said it is not reasonable to expect that a worker will never encounter a situation where they have a relationship with an offender. McFadyen gets four or five cases a year where a worker sends him an email about a relationship. When the worker reports, management decides whether an accommodation is needed. Ordinarily the accommodation will be making sure the offender and the worker are not on the same unit. Depending on the degree of the relationship, the inmate may be transferred to another centre.</p> <p>There have been situations where an employee has not reported a relationship. McFadyen has not been involved in any situations, other than Longman's, where an employee was terminated for breach of the relationship policy.</p> <p>McFadyen said about 75 to 80 per cent of inmates at RPCC are First Nations. About five per cent of the corrections workers are First Nations. About 30 per cent of corrections workers are women.</p>
May 1	Longman	<p>McFadyen called Longman into the office for a meeting about the fact she had fallen asleep at work. Longman tried to explain that she had been sleeping on her break and that her partner was on duty. When Longman asked McFadyen why she was called in for sleeping on her break when everyone else does it, McFadyen responded, "We're not here about everybody else. We're here about you."</p> <p>During that meeting, McFadyen also said "they" got an anonymous call from the community saying Longman was in a relationship with Tyrone McNabb. Longman told McFadyen that she knew of McNabb and that she</p>

		<p>was not in a relationship with him. Longman told McFadyen it would be important to know who had made the call because Longman was in the middle of family court and the call may have come from Longman's ex-husband's current wife. McFadyen said he couldn't say who had called. McFadyen didn't ask Longman any questions about how she knew of McNabb. McFadyen asked Longman if she was aware of the Relationship Policy.</p> <p>McFadyen didn't raise anything at this meeting about McNabb being a gang member. Longman didn't even know if McNabb was in jail at that time and McFadyen didn't say.</p>
May 5	McFadyen	<p>On May 5, 2008, McFadyen provided Longman with a letter to follow up from their meeting:</p> <p>On May 1, 2008 a meeting was held with you to discuss two issues that had come up pertaining to you. In attendance at the meeting were yourself, Verna Tuskewich (Shop Steward), Brad Magnusson (manager), and myself.</p> <p>The first issue of discussion surrounded information that the employer had received that indicated that you may be in a relationship with an offender (Tyrone McNabb) who is presently incarcerated at the RPCC.</p> <p>You addressed this concern by saying that in fact you know who this person is, but do not, nor have had a relationship with his individual. You also mentioned that you have no problem/conflict fulfilling our duties at the centre while he is here.</p> <p>I had then mentioned to you that if a relationship had existed that you were required to report it to the employer as per Divisional Directive Personnel 0020.</p> <p>The second area of concern was the fact that you were caught sleeping during your shift on April 25, 2008. Although you were not providing supervision to offenders at the time, this type of behaviour is not representative of appropriate conduct.</p> <p>You were cooperative in responding to this claim, and admitted to your wrongdoing. You were made aware in that meeting of the expectations around fulfilling your duties as a Corrections Worker and that sleeping during your shift is not appropriate. This letter will serve as a letter of reprimand in this regard.</p> <p>If you have any further questions in this matter please let me know.</p> <p>McFadyen can't say whether Longman understood Directive 0020. He doesn't remember whether she said anything at the meeting to indicate she was not aware of her obligations under the policy.</p> <p>McFadyen doesn't remember Longman's response to being told she had to report any relationship. He ran under the assumption Longman agreed with the letter because it wasn't grieved. McFadyen confirmed Longman was not disciplined for having a relationship with Tyrone McNabb. She was disciplined for sleeping on the job.</p>
Spring	Scriver	<p>Heather Scriver has been Executive Director of Institutional Operations with the Corrections Service since 2006. She began as a corrections worker and was also Deputy Director of Pinegrove Institution for a time. Scriver is in charge of institutional operations at all the secured facilities.</p>

		<p>She deals with policies, incidents that need to be investigated or reviewed, policy development, strategic analyzing, budgets and "those kinds of things".</p> <p>Senior management and Human Resources personnel advise Scriver of situations where there may be a violation of policy or a concern about the integrity of Corrections or the Ministry or the public service.</p> <p>With respect to Longman's situation, the Director called Scriver initially in the Spring of 2008 to advise her of the situation. Overall, she had three or four conversations with Hulet as well as an email or two. Scriver met with Human Resources and Labour Relations.</p>
July 7	Longman	<p>Longman's friend and co-worker, Gloria passed away and was buried on July 7.</p> <p>Longman was also going through a rough time personally. She was involved in a family court battle where her ex-husband tried to take her children from her.</p>
August 22	Longman	<p>On the evening of August 22, 2008, Longman had been drinking at her own home with one of her son's friends. She was intoxicated. She had been invited by her friend, Tiara McNabb, to come to a house for a party, so Longman got her son to give her a ride to that house. Longman doesn't even know whose house it was. When she got to the house, her friend wasn't there. Longman did not have any drinks with anyone at this house. In addition to three men Longman left with, there were six or seven other people at this house.</p> <p>Without her friend there, Longman wanted to leave. She doesn't know whether she asked for a ride home or whether it was offered. She left the house with Adrian Cyr, Tyrone McNabb and Tyrell McNabb who were going to give Longman a ride home. They didn't get very far when the car broke down. They got out and started walking.</p> <p>The group had walked about three-quarters of a block when they were surrounded by three or four cars, not all of which were identifiable as police cars. There was a van and a car and an SUV for sure. The police separated the four of them immediately. A police officer told Longman to get on her knees and put her hands on her head. He then handcuffed her. Longman was frightened and she sobered up pretty quickly. She had never been in an experience like this before and it was scary.</p> <p>Cst. MacLean was the officer who dealt with Longman. He was the only officer who spoke to her or questioned her. MacLean asked Longman her name. She told him. He asked her where she worked. She told him. This happened while Longman was on her knees and handcuffed. This was on a residential street. There were no other people around. The car the four had been travelling in was not on fire at this point. Longman never did see the car on fire. She didn't see any smoke either.</p>

MacLean told Longman she was being arrested because the car was burning. MacLean took Longman alone to a vehicle. Longman does not remember being read her rights. The other three were taken to separate vehicles. Once MacLean got Longman into his vehicle, he asked her who burned the car. Longman said the car wasn't burning when they left it. MacLean told Longman she had to tell him that one of the guys burned the car. Longman continued to say that wasn't true. When they arrived at the police station, the other three vehicles went down inside and MacLean sat outside with Longman. He kept saying Longman better tell him who burned the car because the others were probably putting it all on her. Longman asked MacLean how they were going to put something on her when the car never burned. Longman asked MacLean if she could be charged with something when all she was doing was getting a ride. MacLean said she could be charged because the car was stolen and it was burned.

During the questioning, MacLean was friendly and asked Longman what it was like working at the RPCC. Longman told MacLean about her negative experiences. Longman felt MacLean was concerned about her. Longman told MacLean that as an aboriginal woman she was always being accused of being with the men in the jail. She told MacLean that the female guards all get accused of sleeping with the inmates.

During this conversation, MacLean received a radio call. When done he told Longman she was lucky and she could go home because it turned out the car wasn't stolen. Longman gave MacLean her home number, he called Longman's son, and then he drove her home. On the way home, MacLean told Longman he would be notifying the RPCC about the incident.

At no time during the incident did Longman hear Tyrone McNabb call her his "old lady".

Longman was on five or seven days off at this point. At that time she drank during her days off.

Longman never heard anything more about the incident from the Regina Police.

Longman didn't report the incident to her employer because the police officer had said he was going to be calling the RPCC to report. Longman didn't think there was anything to report. The car wasn't stolen and there had been no reason for the police to detain her.

Longman had never socialized or drank with any of the three men. She can't say if she was ever in the same bar as them because there are a lot of people in bars. One of the corrections workers actually owns a bar called the Patch. Longman has been in this bar with work colleagues and other friends when she has seen ex-offenders in this bar.

At this time Longman only knew of Tyrone McNabb because she knew he was Tiara McNabb's brother. The McNabbs are from Peepeekisis First Nation. Longman thinks she first met Tiara at a powwow about three years

		<p>earlier. She knew of Tyrone, had met him before, but that was it. She had never met Tyrell McNabb or Adrian Cyr before August 22. Tyrone McNabb wasn't involved with the same crowd as Longman. Neither was Tiara McNabb. Longman just drank occasionally with Tiara.</p>
August 22	MacLean	<p>Corporal Robert MacLean is a member of the Regina Police Service. He was a constable in August of 2008.</p> <p>MacLean was in north central Regina around nine pm one evening in August 2008 responding to a report of a car on fire. The car matched the description of a car that had been reported stolen. MacLean was working with the stolen auto unit at the time. He doesn't remember how he received the call, but he thinks it was probably by radio. He was looking for a stolen Saturn that night and this car was a Saturn. Other officers dealt with the car. MacLean never saw the car.</p> <p>Longman and three men were found in the area of the car. The police hung onto Longman and the three males. MacLean doesn't remember how many police vehicles were at the scene when he got there. He was driving an unmarked vehicle. He was alone, not working with a partner that night. The police detained Longman and the three males and fairly quickly separated them.</p> <p>Another officer, Cst. Sterling's report says one of the officers saw a man with no shirt on. One of the three males who MacLean believes was Tyrone McNabb kept calling Longman his "old lady". MacLean does not recall Longman responding to this. MacLean doesn't recall any of the others referring to Longman as "old lady". In cross-examination, MacLean said it was when the groups was still together on the street that he heard the man he believes to be Tyrone McNabb say, "That's my old lady." Longman did not respond to that.</p> <p>MacLean and a Constable Sterling spoke with Longman. Others spoke to the males. MacLean is not sure how many. MacLean didn't interview the others and he doesn't know if they were every cautioned or arrested, but he does know they were not charged with anything. MacLean says he arrested and handcuffed Longman. She admitted being with the car. MacLean gave Longman "her rights and warnings" because he had reasonable grounds to believe the car had been stolen and that this may be arson.</p> <p>MacLean doesn't remember how long Longman was in custody before he read her her rights. MacLean took Longman into custody and started transporting her to the Regina police cells. During this time, Longman told MacLean she worked at the RPCC. MacLean doesn't remember if Longman volunteered this information or if he asked her the question. MacLean remembers asking Longman about the car. When asked if he suggested to her she should tell him who stole the car, he said, "Don't recall". When asked if he told Longman he was going to call the RPCC, he</p>



		<p>said, "Don't recall that at all."</p> <p>While they were on the way to the police cells, as they arrived at the doors where you drive down to the cells, other officers determined the car was not stolen, that it belonged to the sister of one of the men and that it had started on fire because of the way it was being driven.</p> <p>Longman was intoxicated, so MacLean made arrangements to take her home. Longman told MacLean she had been accused in the past of sleeping with inmates at the RPCC. MacLean dropped Longman off at her home to her son, Cory Longman.</p> <p>MacLean says he "submitted an internal document about what she had told me about what she was involved with". MacLean says he submitted a report "just because if she is being truthful and she is a corrections workers and if she is associating with people in jail, it is a security concern for police officers and corrections workers because there is a lot of information that is shared." In cross-examination, MacLean said he submitted his report by email "to a department within our police service." The email was not produced in evidence in this hearing.</p> <p>MacLean submitted his information and a document was prepared from that. The information goes into a databank at the Regina Police Service. MacLean did not personally prepare the Regina Police Service document, nor did he personally send this document to anyone at RPCC.</p> <p>MacLean's notes about this incident say:</p> <p style="padding-left: 40px;">Thursday, Aug 21-08 -- 1400-0000 -- temp 27 = 128P -- 733143 -- Leigh Ann Longman 410 St. John St. DOB June 15-75 -- Ph 949-4966 -- 21:49 -- rights warning possn</p> <p style="padding-left: 40px;">Arson</p> <p style="padding-left: 40px;">Yes -- no -- yes</p> <p style="padding-left: 40px;">Turned over to Chris Longman.</p> <p>MacLean says "yes-no-yes" means "yes" that she understood her rights and that "no" she didn't want a lawyer.</p> <p>During cross-examination, MacLean was shown a document headed "Regina Police Service" (the Hulet Document). He said he had never seen that document before.</p>
September 2	Zimmer	<p>Lorne Zimmer has been a Security Intelligence Officer (SIO) with the RPCC since July of 2007. He has been at the RPCC for 26 years, was a corrections worker and was the Deputy Director of Security for seven years. Zimmer's predecessor as SIO was Dave Cote. The SIO position was created around 2005.</p> <p>In 2008, Zimmer's primary duties as SIO dealt with street gangs. The work involved interviewing inmates, receiving information from the RCMP and Regina City Police and verifying gang associations and the extent to which inmates were involved in gangs. This information was then shared with</p>

		<p>management and staff at the RPCC. Zimmer prepared a monthly gang report listing all gang associated inmates in each unit. This report went out to everyone at the RPCC by email.</p> <p>RPCC is concerned about gangs because of safety and security concerns. Knowing gang affiliations can be important for things like cell placements. Zimmer interviewed inmates to verify information he had received from others to see if inmates would self-admit gang affiliation. Gang members usually want to disclose gang affiliations because they want to get a safe placement away from rival gang members.</p> <p>Corrections maintains a database (CMIS) where information about gang affiliation is entered. There is a special spot in the system where a gang alert is highlighted. Everybody in the ministry has access to the system, including the corrections workers who are trained on how to use it.</p> <p>Zimmer vaguely remembers that on September 2, 2008, he received information from a confidential source that Longman was involved in an incident on the street about a fire in a vehicle and hanging around with a gang member.</p>
September 5	Zimmer	<p>Zimmer said he was not at liberty to disclose the source of his information and that at the time he was not free to use the report he had received from the Regina Police Service because he would need the permission of the author of the report. He said he was called confidentially to come to the Regina Police Service and he was not prepared to disclose the name of the person who called him. "They" were concerned that being a corrections worker, Longman had access to all the security procedures and to information about all the people at the three correctional centres. Knowing that and knowing Longman was involved with a gang member caused concern.</p> <p>Zimmer did not investigate the report he received. He did not speak to Longman about the report. He felt he needed to pass the information on to upper management and let them deal with it as they saw fit.</p> <p>On September 5, Zimmer sent an email to Julien Hulet who was then the Director at the RPCC:</p> <p>On the 2<sup>nd</sup> of Sep I received an Intel Report regarding one of this centers staff. The report is attached. I was called to a meeting at RPS about the Intel and was provided some details and concerns that I am forwarding to you. Of the four subjects involved, Tyrone McNabb is known to myself to be active NS and has been since the late nineties. The other two males I am unsure of but the street gang unit is investigating. I was told that initially when they were first questioned they denied any knowledge of the burning car and information was not very forthcoming. They were then taken in for questioning and Leigh was a little frightened and provided to the police the fact that she was a guard at the jail. As stated in the report she was very close to Tyrone who continually called Leigh his old lady. Charges are not pending in this incident but the RP</p> <p>S is having some Major security issues. Namely because of a staff who has access to some very sensitive information that is socializing with known gang</p>

members.

Tyrone was in our institution on a remand warrant and was discharged on 07-jul-2008 with an expired remand warrant.

The document attached to the September 5 email to Hulet is titled *Regina Integrated Intelligence Unit*. The Investigator is named. That investigator did not testify at this hearing. The report has two parts, one entitled "Introduction" in which it names Longman and the three males involved in the August 21 incident. The report shows there is a file on Tyrone McNabb, but shows no file on any of the other three. The other part, entitled "Information", says:

1. On August 22, 2008 Cst. R. MacLean #644 (CID) contacted RIIU and provided the following information.
2. Leigh LONGMAN was located with Adrian CYR, Tyrone and Tyrell MCNABB. They were all extremely intoxicated and had just left a burning car. Leigh told me she was a guard at the P.C.C. Tyrone advised us that he had just got out of the Correctional. During our interview with them Tyrone continuously called Leigh his old lady. Leigh also told me that she has been accused of sleeping with the inmates at the jail.

Zimmer produced current information on the CMIS database about Tyrone McNabb. Relevant to possible gang affiliation, it says:

Tyrone self admits to being an NS associate and has been since the late ninety's.

Apr-2010 Self declares an association to the Native Syndicate

20-SEP-2010 SAME AS ABOVE – SUBJECT STATES HE HAS FRIENDS IN THE N.S.

05-JAN-2011 SAME AS ABOVE – SUBJECT STATES HE HAS FRIENDS IN THE N.S.

This report does not reflect the date when the original gang alert was put into the system. The only information a search would have identified in 2008 would have been the first entry:

Tyrone self admits to being an NS associate and has been since the late ninety's.

During cross-examination, Zimmer was shown the Hulet Document. He said. "That is not my report at all."

When asked if there is a difference between an "associate" and a "member", Zimmer said he is not sure how the terms were used in 2008. He agreed that being friends with a gang member is not the same as being a gang member. He agreed that if someone had friends or associates who were in a gang, that person might self identify so they won't be placed in a unit with a rival gang.

Zimmer identified a number of street gangs and said that in 2008 virtually all gangs other than one he could think of were aboriginal gangs. Zimmer didn't recall what percentage of aboriginal inmates self-identified as having gang affiliations in 2008. Today inmates with gang affiliations amount to somewhere between 20 and 27 percent of the inmate population.

		<p>Zimmer admitted there have been times when he thought someone was one thing and it turned out they were something else. If someone had been a gang member and was found to no longer be a member, the old information would not be taken from the system. There would be a new notation reflecting that the person was no longer a gang member.</p> <p>Zimmer does not investigate staff. He works on gang ties and other security issues like if there are drugs or shanks or weapons in the institution. In 2008 he was not involved in investigating inmate relationships with workers. Today Zimmer goes "where the information takes me". He was evasive about how much he has investigated male workers for alleged inappropriate relationships.</p> <p>When asked in cross-examination where in the report he received it said Longman was close to Tyrone McNabb, Zimmer said "I am going to guess that is information I obtained at the meeting at RPS." This meeting was with the source Zimmer would not identify. He would not confirm or deny whether MacLean was the confidential source. He also referred to the "third party rule" which means you can't use information from a third party without their permission, but acknowledged he hadn't received third party consent to providing the report to Hulet.</p>
September 5	Hulet	<p>Julien Hulet is currently the Provincial Director of Security Intelligence for Saskatchewan. He was Director of the RPCC from 2004 to 2009. Hulet received an email from Lorne Zimmer on September 5, 2008. He believes the attachment to the email may have been a police report. Hulet says he asked Zimmer to contact the Regina Police Service to clarify how RPCC could use the information because they share information or intelligence "with the provision it is guarded information." He asked Zimmer to contact the author of the report and identify whether they could use the information.</p> <p>Hulet received approval to use the information from the police report. He prepared a document which he says was "my interpretation of the police report". He took the gist of the information on the police report and prepared a document in which he tried to capture the police information in a document he could share with Longman. He says he used the report he received from Zimmer to cut and paste pieces of it into the document he created. The Hulet Document reads:</p> <p style="text-align: center;">Regina Police Service P.O. Box 196 Regina Sask S4P 2Z8</p> <p>On 22-aug-2008 Cst. R. MacLean submitted an Intel Report to R.I.I.U. regarding Leigh Longman. Leigh was seen in the company of known gang members (s). She was intoxicated and voluntarily told police that she was a Correctional Officer at RPCC. Members of the RPS expressed their concerns to corrections regarding Leigh Longman.</p> <p>On this date, 11-sep-2008, Cst. Robert MacLean of RPS was contacted by phone</p>

		<p>regarding his report and permission was given to use the attached information for investigative purposes.</p> <p>Leigh Longman was located with Adrian Cyr, Tyrone and Tyrell McNabb. They were all extremely intoxicated and had just left a burning car. Leigh told me that she was a guard at PCC. Tyrone advised that he had just got out of the Correctional. During out interview with them Tyrone continuously called Leigh his Old Lady. Leigh also told me she has been accused of sleeping with inmates at the jail.</p>
September 5-9	Hulet	<p>Hulet found the situation to be alarming because the RPCC was struggling with the influence of organized crime in the facility. Gang members were problematic because of violence, threats, coercion and contraband. If placed on the wrong unit, inmates can end up dead or in the hospital. Staff are in heightened perilous situations. RPCC has partnered with the RPS and the RCMP to develop a relationship where they could share information. The relationship is based on trust that information is guarded and won't be vulnerable to being shared or disclosed.</p> <p>Because of this incident, Hulet feared the relationship with the police was jeopardized in the sense that the information RPS shared with RPCC that McNabb was gang related was available on CMIS and every staff member at RPCC had access to that information. "We needed to trust that our employees would access that information. Longman being found in the company of "a known gang member" brought RPCC's integrity into question.</p> <p>Hulet never suggested Longman personally took information and shared it. Hulet's concern was that the optics of the situation undermined credibility with RPCC's justice partners and impacted the public's confidence. The situation reflected poorly on the remaining 1200 corrections branch employees.</p> <p>Hulet was concerned about Longman's off duty conduct because as peace officers there are expectations in directives. The Code of Conduct 0009 policy talks of off duty and on duty conduct. There is a standard that is expected of employees in the public service.</p> <p>Over the next few days, Hulet gathered information about McNabb's placement when he was at the RPCC and searched the CMIS database. In searches performed on September 9, 2008, he found a "Gang Affiliation" alert that said:</p> <p style="padding-left: 40px;">Tyrone self admits to being an NS associate and has been since the late ninety's.</p> <p>He also noted McNabb had been released from the RPCC on July 7, 2009 after having been there for 89 days on a remand warrant. He was on probation expiring November 11, 2008.</p> <p>On cross examination, Hulet said that other than access the CMIS, he may also have looked at Longman's personnel file to "see if there are any markers in there". He might also have advised Human Resources and may have given Heather Scriver a heads up. He didn't do anything to confirm</p>

		<p>the authenticity of the information from the RPS. He didn't talk to any police officer. He didn't talk to the ex-inmate. Hulet felt a meeting with Longman would either discredit the information or find merit in the information. Hulet didn't ask Zimmer what he talked about when he met with the RPS.</p> <p>Hulet never did confirm whether Longman had a relationship with Tyrone McNabb. Hulet knew she was in a vehicle with an ex offender and she was intoxicated. That speaks to an element of a personal relationship. The policy doesn't talk about husband and wife. It talks about "a relationship".</p> <p>Hulet says he allowed a gap of time between September 5 and September 9 to see if Longman would self report the incident to her supervisor because "the policy speaks of reporting". Hulet doesn't know if Longman tried to report the incident, but he never found any record of her reporting. He feels if she had reported this to anyone, "it would have been in my office five minutes after the report occurred."</p> <p>On September 9 Hulet sent a letter to Longman:</p> <p>Please be advised that effective this date, September 9, 2008, you have been placed on Leave with Pay. I am presently establishing a review process of information that has been brought to my attention in regard to your off-duty conduct. This process will involve you attending the Regina Provincial Correctional Centre Front Boardroom Friday, September 12, 2008 at 2:30 pm. Please arrange to bring a Shop Steward to this meeting.</p> <p>Thank you for your anticipated cooperation in this matter.</p> <p>Hulet felt he had to put Longman on leave with pay "for her protection and our protection". He suggested a shop steward for her protection. At this point he didn't anticipate where things would end up, but thought it might end up in discipline and there are collective agreement requirements for union representation.</p> <p>Hulet gave the letter to Longman at a meeting on September 9, 2008 at which he was accompanied by Acting Manager of Personnel Paul Sagel and Longman was accompanied by Union representative Natalie Owl.</p>
September 9	Longman	<p>Longman didn't report the August 22 incident. She knew the police officer was going to report it and she was waiting to be called in. The officer said he was going to report that she had been arrested for a burned car. She wasn't surprised when Julien Hulet called her to a meeting.</p> <p>Hulet told Longman he had received a police report from the RPS that said she had been charged with burning a stolen car while with a gang member and that he was putting Longman on leave without pay pending an investigation. Longman doesn't remember receiving the letter telling her she was being put on leave.</p>
September 12	Hulet	<p>Hulet met with Longman and shop Steward Michael Cummings. After the meeting he prepared a memorandum outlining what had occurred. Others at the meeting included Paul Sagel and Human Resources representative Janet FitzGerald.</p>

Hulet presented Longman with the Hulet document. He then provided her with Directives 0009 and 0020 (the Conduct Policy and the Relationship Policy referred to below). Hulet read the section on personal conduct.

The Relationship Policy doesn't prohibit relationships. It provides the Employer the opportunity to develop awareness of relationships. It is not uncommon for the Employer to transfer people, assign people to different units and so forth to protect the inmates and the workers.

Hulet asked Longman to respond to the Hulet Document. Cummings said Longman wanted to answer questions. Hulet produced notes from the meeting as well as a memorandum about the meeting. The notes, which the parties agreed to enter into evidence and which were prepared by Longman's supervisor, Paul Sagel (who did not testify at the hearing), read:

Julien shared the report received from the Regina Police which stated that Leigh had been seen publicly, intoxicated, in the company of ex-inmates and known gang members. Julien also shared two Adult Correction policies, 0020 – *Reporting of Relationships between Staff and Offenders* and 0009 – *Standards of Conduct for Corrections Staff*.

Michael asked if any charges had been laid and Julien replied that to our knowledge, no charges had been laid.

Leigh explained that she had gone to meet a friend, Tiara McNab, who is a sister of Tyrone and Tyrel McNab. Tiara was not there and the brothers and their friend Mr. Cyr were there. Leigh stated she was intoxicated and needed a ride home and they offered to drive her home. She stated the car broke down – she walked away, she was intoxicated and that's when the police arrived. The police thought it was a stolen car, but it wasn't so they let her go.

Leigh stated she has known Tiara for over a year; that she just met Tyrel and Mr. Cyr that night; and Tyrone she has known for 3-4 years as he is from a nearby reserve. She clarified that they are just "friends". In response to Julie's question, Leigh confirmed that she had known Tyrone when he was incarcerated. Julien asked if she was aware that he was a gang member. She responded he is not a gang member, although she knew that RCC had identified him as one. Reference was made to a letter of reprimand which Leigh received in May, 2008, where she admitted knowing Tyrone but denied that there was a "relationship" with him. When asked about the reference in the police report to Tyrone referring to her repeatedly as "his old lady", Leigh replied that all the guys refer to any girl as that.

The police asked Leigh where she worked and she was truthful with them and told them she was a CW at RCC. Leigh stated that she is always professional on the job and would never let her behaviour outside of work interfere with doing her job. She also stated that she does not feel she could give up many of her Aboriginal friends and contacts just because they had been in trouble with the law. She cried and said she needed the job, and that she had made a mistake.

Mr. Cummings discussed the Aboriginal Community in which Leigh lives, stating that she lives in Regina because she has been ostracized from her home reserve due to the job that she has. He stated that it is unrealistic to expect that some of her Aboriginal friends and acquaintances would not have been in trouble with the law at some point. This is a mitigating circumstance from Mr. Cumming's perspective.

Mr. Cummings stated that prior to our forming any conclusions about this matter, he might require some assistance from Shane Osberg, FSIN, or the Human

Rights Commission as he doesn't feel qualified to deal with this issue. He will make his contacts and advise Julien of the outcome.

Leigh was provided with a brochure outlining the EFAP program and encouraged to seek assistance and support from a counselor there. +

*Hulet's memorandum to the L. Longman investigation*  
*File reads:*

Copy of information from Regina Police Services presented to Ms. Longman.

Divisional Directive Personnel 0009 – Standards of Conduct for Correction Staff presented to Ms. Longman.

Page 2 Paragraph 2.0 Personal Conduct – read aloud by my manager.

Page 3 appendix A, Personal Conduct paragraph read aloud by manager.

Divisional Directive Personnel 0020 – Relationships Between Corrections Employees and Offenders/Ex-Offenders.

Page 1 – Principles – read aloud by manager.

Page 2 General 1.2 – read aloud by manager.

Ms. Longman confirmed that she was aware of these policies.

Ms. Longman was asked to comment on the Police summary. Mr. Cummings responded by asking how we had received this information. Writer explained the RPS had forwarded this information to my office given the involvement of a Peace Officer employed at RPCC.

Ms. Longman and Mr. Cummings preferred that we ask questions and Ms. Longman would respond accordingly.

Please explain the circumstances:

Ms. Longman explained that she had been drinking that evening and had walked over to her friend's house - Tiara McNab to arrange for a ride home. When she arrived Tiara was not home however Tyrone, Tyrell McNabb and Adrian Cyr were at the home. She asked for a ride home and they obliged. On the way home the car broke down so they started walking. It was then that RPS picked them up and took them to cells to investigate the situation. She was released several shortly [sic] thereafter and RPS provided her a ride home.

How do you know these men?

Ms. Longman explained having met Tyrell and Adrian for the first time that night. She had known Tyrone for about three years as a friend. He is from her First Nations home community... (name?)

Did you report this relationship to the employer?

Ms. Longman explained that when she met with Mr. McFadyen on May 01, 2008, she explained having known who Tyrone was but that she did not have a relationship with this individual. She also identified not having a problem/conflict fulfilling her duties while he was incarcerated at RPCC.

Are you aware that Tyrone McNabb is a gang member?

Ms. Longman identified that she knows Tyrone and that he is not a gang member. The information that the Police have is wrong and Tyrone should not be labeled as a gang member.



Are you aware that RPCC identified Tyrone McNabb as a gang member?

Ms. Longman identified that she knows that RPCC and RPS identify Tyrone McNabb as a gang member but she knows that he is not.

Are there any mitigating circumstances in this matter?

Mr. Cummings identified that nearly 80% of the offender at RPCC are aboriginal it is unreasonable to expect that Ms. Longman would not know or have contact with some of them on the street. This would apply to those that are as well members of aboriginal gangs.

Why would Tyrone McNabb call you his old lady?

Ms. Longman explain that everybody on the street call women "old lady's".

Ms. Longman explained that she made a mistake in her personal life and there was no way that she knew was going to happen.

She explained that she is not going to give up her friends, her community or the people in her life. She is always professional when she is at work.

Do you understand the conflict of interest issue?

Mr. Cummings responded indicating that if a staff member is at a coffee shop and an inmate comes into the same store and sits beside him...how is that a problem? Or Cal Johnson's son...he's in jail and was having drug problems...isn't that a conflict for Mr. Johnson?

Ms. Longman explained that this was more about being at the wrong place at the wrong time. She is not prepared to abandon people from her community. She was asked how many people are from her home community – she explained about 1000; of those probably 500 were adults; of those probably 250 were men with about 25 were gang members. The writer identified that these 25 were probably the men from her community that she need to refrain having contact with.

Mr. Cummings identified that Leigh is now in Regina is no longer connected to her home community as she has been ostracized because of her work with the Ministry.

Leigh explained that if we asked her to refrain from having contact with her friends at RPCC – she would be unable to find a range or unit to comply with that request. The issue remains her off duty conduct.

Mr. Cummings stated that prior to our forming any conclusions about this matter, he might require some assistance from Shane Osberg, the FSIN, or the Human Rights Commission, as he doesn't feel qualified to deal with this issue. He will make his contacts and advise Julien of the outcome.

Leigh was provided with a brochure outlining the EFAP program and encouraged to seek assistance and support from a counselor there.

Hulet says this report summarizes his recollection of what happened at the meeting.

Hulet says he remembers Longman talking about being in a tough situation and not wanting to drive when she was drunk. She was afraid when she was arrested. The police asked her where she worked and she told them. They gave her a ride home. Longman said she had told McFadyen at an earlier meeting that she did not have a relationship with Tyrone McNabb.

		<p>Hulet was alarmed when Longman said she knew McNabb wasn't a gang member. Peace officers are expected to comply with policy. "As a Director I trust that my peace officers are compliant with these legal directives and that their behaviours are consistent with the behaviours that are set out for them regardless of their personal opinion. People can get seriously hurt if peace officers don't act in a situation." Hulet expected Longman to accept RCC information about an inmate and the information about McNabb was alarming to Hulet.</p> <p>Hulet wanted to know if there were mitigating circumstances such as threats, coercion, personal problems, addictions or health issues. The only response he got was that 80% of inmates are aboriginal and it is unreasonable to expect Longman wouldn't have some contact with some of these people on the street. It is not Hulet's experience that people on the street call women "old lady".</p> <p>Longman said she had made a mistake in her personal life but she wasn't going to give up her friends. That was another alarming statement because Hulet was worried if other staff could trust Longman if there was an issue in the jail like a riot or suicide threat. Would Longman choose the staff or the inmates or the people she said she would not abandon?</p> <p>Hulet said he explained to Longman that he was not saying she could not see her friends. The issue was her off duty conduct with a gang member.</p> <p>Cummings wanted to confer with others and wanted time to do this. Hulet agreed. Longman continued to be on leave without pay.</p> <p>In cross-examination, Hulet said he did not disbelieve Longman's story about what happened. He believed she was just catching a ride home with these people.</p>
September 12	Longman	<p>While she does not recall the date, Longman does recall a meeting with Hulet where Michael Cummings attended with her. Hulet showed Cummings and Longman a report he said he received from the RPS. Longman identified the document provided to her as the Hulet Document which is now known to have been prepared by Julien Hulet. When showed the actual RPS report, Longman said she had never seen that before.</p> <p>Longman wasn't surprised she was called in because the police officer had told her he would be calling the RPCC. She had been waiting for the call.</p> <p>Longman recalls Hulet asking her if she knew Tyrone McNabb was a gang member. Longman said she didn't think McNabb was a gang member.</p> <p>Longman says Hulet's memorandum about the September 12 meeting is not accurate. Longman says she did not tell Hulet she had walked to her friend's house. She told him her son had given her a ride, which is in fact what happened. Longman does not believe she would have said she asked for a ride home because she has always been uncertain of whether she asked for a ride or one was offered. Longman did not say Tyrone McNabb</p>

		<p>was from her First Nation. She said she had met Tyrell and Adrian for the first time that night. She did not say Tyrone was her friend. She said she had known of him and probably explained that was through his sister. She said he was probably from the same community as his sister.</p> <p>Longman recalls being asked about mitigating circumstances and Michael Cummings saying something like that set out in Hulet's memorandum.</p> <p>Longman says she did not say she would not give up her friends or community. She said she is always professional in her work. She tried to explain it would be difficult for her not to associate with people from her community because the fact she wears a government uniform doesn't change the fact she is aboriginal. She said she cannot pretend not to know her own people. She asked Hulet what he defined as a relationship. She told Hulet if they gave her a list of all the inmates, there would probably be two people per unit who she knew of. She asked where that would leave her to work and Hulet said, "Nowhere in this institution."</p> <p>Longman said she broke down and said she was in the wrong place at the wrong time. Longman cried. She told Hulet she had made a mistake by catching a ride and being intoxicated in a public place and she would never put herself in this kind of situation again.</p> <p>Longman does not remember making the comment attributed to her about the use of the term "old lady". She never heard Tyrone McNabb call her "old lady". In the First Nations community there are lots of uses for the term other than to mean boyfriend/girlfriend, including if you are the oldest person in a group. "Old lady" can also mean mother or grandmother.</p> <p>Longman remembers the accusations against her being "scattered". It was unclear what the real issue was. She was told she had been criminally charged. She was told she was in a relationship. She was told she was intoxicated.</p> <p>Longman remembers being given the EFAP brochure.</p> <p>After the meeting Longman called the FSIN for help. The person she spoke to said they would help her but only if they got half her settlement. She decided not to go to human rights because someone advised her that they would pursue her issues through the grievance procedure.</p>
September 12	Cummings	<p>Michael Cummings is a corrections worker at RPCC. He has been there for about nineteen years. He has been involved in union activities including being Shop Steward at the RPCC for about twelve years. Cummings was Longman's Steward during part of this process.</p> <p>Longman called Cummings and told him she was being called to a meeting and asked Cummings to come with her. Cummings met with her before the meeting and discussed what the meeting might be about. Longman explained she had been put on administrative leave and the RPCC was investigating an instance where she was detained by the Regina Police</p>

Service while she was walking down the street with three men. Longman explained she was drunk at the time and was walking because the car had broken down. On the way home, the police came upon them and detained them. On questioning by Cummings, Longman confirmed she had not been arrested or charged with anything. At this meeting, Longman also told Cummings about the May meeting with McFadyen where he had raised with her the question of whether she had a relationship with Tyrone McNabb.

Cummings went to the meeting with Longman. The others at the meeting included Julien Hulet, Paul Sagel and someone from Human Resources. At the outset Cummings asked if there was a likelihood of discipline and Hulet said yes.

Hulet presented information he said he received from the RPS to say Longman was detained in the company of ex-offenders. He said the name Tyrone McNabb. Hulet presented a document on regular sized paper. He handed the document to Cummings as information received from the RPS. Cummings identified the Hulet Document as the document Hulet presented to him. Hulet said this was a report from the Regina City Police about the incident.

They discussed the information in the document. Hulet referred to the Relationship Policy. Cummings said he didn't understand how the Relationship Policy applied to this situation when Longman was walking down the street and she was detained by police. Hulet insisted the policy applied. Cummings reminded Hulet they had dealt with more serious situations where Hulet didn't even bring out the policy. Cummings told Hulet he felt he was going overboard and that this was discriminatory. Cummings said Longman is First Nations and what are the chances if she is walking down the street with other First Nations that someone would not have had contact with the criminal justice system. The percentage of First Nations inmates at RPCC is 75-80. In the rest of Saskatchewan it is even higher. Cummings felt it was also highly unlikely a First Nations person would not have had contact with other First Nations who belonged to a gang.

Hulet said Longman was in the company of known gang members. Hulet did not provide any evidence that any of the men Longman was with were gang members. They did not discuss the "gang member" issue in detail at this meeting.

At that time there wasn't yet much of an understanding or education about gangs and gang issues. The gang issue really came to light that year when five murderers who belonged to a gang escaped from the RPCC. That incident was terribly embarrassing to the Ministry because the Minister had said on television that there were no gangs in Regina and no gang issues in Saskatchewan. He had to withdraw those statements a few hours later. The whole issue of gangs then suddenly became more of an issue but the

staff still weren't any more educated about gangs over the next few months. Staff had been aware of gangs but didn't have a full understanding of their existence and what they did.

Hulet kept saying, "There is more here than I can divulge," but Longman was seen in the company of known gang members. Cummings kept talking about the discriminatory nature of what was happening. It was not the first time aboriginal woman had been singled out. Cummings could not remember one aboriginal woman in the workplace who had not been accused of having an affair or relationship with an inmate. Hulet said it was not about Longman being aboriginal, but about her being in the company of known gang members. "He kept saying there was information that was privileged and he couldn't share it with me." Cummings felt he needed to get other union officials involved. He also said he wanted to contact the FSIN.

Cummings confirmed Hulet's memorandum summarizing the meeting was a reasonably accurate reflection of what went on at the meeting. Cummings remembers making the comments about mitigating circumstances.

Cummings remembers Hulet asking Longman if she knew Tyrone McNabb was a gang member. Longman said as far as she knew, McNabb was not a gang member.

Cummings had dealt with more serious cases than Longman's. He couldn't understand why Hulet was taking this approach with Longman. Other cases had been dealt with in a different way. There was one case of a corrections worker who was drinking and driving and smashed his car into a tree. He left the car there and went home. The police arrested him for leaving the scene of an accident. Cummings talked with Hulet, the worker was sent off to treatment and all was well. There was a guy who had a picture of a dog wearing a swastika and making a Hitler salute on his Facebook page. He was told not to do it again. A worker was stopped at the border and detained. He refused to give a breathalyzer and was charged. He is still working at the RPCC. Those sorts of things happened regularly.

Cummings thought Hulet's response to Longman's situation was "way overboard". She was detained for doing nothing. There was no crime and no charge. Hulet kept responding that there was information he could not divulge because of confidential sources.

Cummings believes both Hulet and FitzGerald asked Longman what was going on in her personal life. Longman said she was going through some difficulties at that time with respect to her family. Cummings does not recall the details.

When asked in cross-examination what information the union feels Hulet withheld from them when Hulet had disclosed information in the Hulet

		<p>Document, Cummings said Hulet was the one who kept saying there was more information and that it was privileged and would not be shared at the meeting. When asked what difference it made that Hulet had made up a document in which he put the information from the RPS, Cummings responded that it is important he have a trusting working relationship with the Director and that he be able to believe the things the Director says. Hulet put forward this document as a report from the Regina Police Service when in fact Hulet had prepared it himself. When counsel suggested to Cummings that "the fact it was rejigged to exclude some sources is just hair splitting", Cummings responded that if the information was exactly the same, why didn't Hulet just give the document rather than preparing something different and presenting it as if it were an authentic Regina Police Service document.</p> <p>Cummings confirmed that at the meeting the only document Hulet provided to Cummings and Longman was the Hulet Document. Hulet did not share Zimmer's email or the actual RPS report or the CMIS printouts that were presented in evidence in this hearing.</p> <p>Had Hulet said the CMIS identified McNabb as gang associated, Cummings said he would have raised a question about what that actually might mean. Cummings said inmates often identify themselves as associated with a particular gang for housing purposes so they aren't put in with certain other gangs. If they have a cousin or someone else they know in a gang, then they try to stay away from rival gangs. Whenever anyone says they even know someone in a gang, then the CMIS is updated to say they have a gang affiliation.</p>
September 16	Hulet	<p>Hulet sent an email message to Michael Cummings:</p> <p>Last Friday when we met with Ms. Longman to review the circumstances of August 22<sup>nd</sup> 2008, you identified your need to confer with SGEU senior officials/lawyers, FSIN representatives, and or Human rights personnel in regards to mitigating circumstances in this situation. I have presently suspended proceedings on this matter until you have an opportunity to make these contacts. This is obviously a disconcerting situation for Ms. Longman and I would like to schedule this subsequent meeting before Sept 23<sup>rd</sup>.</p> <p>Please advise me of our intent.</p>
September 19	Hulet	<p>Hulet sent an email message to Longman:</p> <p>Per your request, please be advised that you will remain on leave with pay until further notice. I am waiting for information from your Union representative and anticipate receiving that by Sept 23, 2008.</p>
September 12-23	Cummings	<p>After the September 12 meeting, Cummings spoke with some aboriginal employees at the RPCC about his concerns about discrimination. He worked with others to attempt to get the FSIN involved, but was finding that difficult.</p> <p>Before he got too far with his inquiries, Cummings had a conversation with Hulet in which they talked about Longman's case. Hulet said if Longman</p>

		<p>were to write a letter saying she understood the optics of this weren't good for the Ministry, that could resolve the matter. Hulet said to have Longman call him. Cummings called Longman and told her what Hulet had said.</p> <p>Longman later called Cummings and told him she had talked to Hulet and that she wanted to write the letter to save her job. Cummings wrote the letter for Longman. He was careful to avoid any admission of guilt, but made sure to explain that Longman understood the optics. Cummings sent his draft to Longman, she finalized it and sent an email to Hulet. From his discussion with Hulet, Cummings believed the content of the email was what Hulet wanted to resolve the matter. Cummings expected to hear further from Hulet about returning Longman to work. Hulet then used the letter to fire Longman.</p>
September 19-23	Hulet	<p>Between the 19<sup>th</sup> and the 23<sup>rd</sup>, Cummings came to Hulet's office and approached a conversation around identifying that Longman was a good employee, had been with RPCC for a number of years, had minimal incidents in her file and inmates and staff liked her. Cummings was looking for a way to deal with the situation in a way that Longman could keep her job. Hulet was okay with this idea and his response to Cummings was, "You know what, Mike, absolutely."</p> <p>Hulet was required to make a recommendation to his boss, Heather Scriver, the Executive Director of Corrections. Hulet invited Cummings to have Longman write a letter outlining the circumstances that happened. Hulet was hoping Longman would identify openly and readily that she had erred and that she had totally accepted responsibility for her actions on August 22 and had put the Ministry in jeopardy. Hulet was waiting for Longman to say it wouldn't happen again.</p> <p>On cross-examination, Hulet said he couldn't remember if he directed that Longman write an email or he agreed with Cummings that she should write an email.</p>
September 26	Longman	<p>Michael Cummings called Longman one day and said he had met with Hulet and Hulet had said if Longman wrote a letter about her wrongdoing, Hulet would have her on the floor in a week. Longman called Hulet and asked him what he needed her to do. Hulet told her to write a letter admitting to her wrongdoing and she would be back on the floor. Hulet told her if she didn't write the letter, she was going to be terminated.</p> <p>Longman asked Cummings what to do. Cummings drafted the letter for Longman and Longman sent it to Hulet by email in the belief this letter would save her job. Longman felt wronged. She felt if she wrote the letter she was damned and if she didn't write the letter she was damned.</p> <p>Longman says the letter is how she feels. She does take full responsibility for her actions on August 22, 2008. She can't change the fact she knows people and knows of people. That didn't change the fact Longman was always professional on the job.</p>

September 26	Hulet	<p>On September 26, Hulet received an email message from Longman:</p> <p>I have had ample opportunity to reflect upon the events of the evening of August 22, 2008.</p> <p>As such, I have come to conclude that it is [sic] possible that my actions on that evening brought the Ministry into disrepute and pose a possible threat to the safety and security of the Regina Correctional Centre.</p> <p>It is difficult and at times impossible, as a First Nations Person, to avoid interactions with members of mine and other first Nation Community who have had contact with the criminal justice system. However I understand that it is incumbent on me to avoid situations where the perception of wrong doing exists and the burden of innocence is mine to prove. This is the challenge if my future but one I look forward to understanding as a First Nation person in the workplace.</p> <p>I look forward to any all future discussion/communication with you that will facilitate and expedite my return to the workplace at the Regina Correctional Centre.</p> <p>Hulet felt this email was not a clear acceptance of responsibility. It was pretty clear to him he could not "bridge that trust gap." He recommended to Scriver that she terminate Longman because of that. For Hulet the problem was Longman's ability to go back to work when there had been a breach that became known to other employees, however that happens. "There is a clear line. Either you are with us and you wear the uniform. If you demonstrate otherwise, you let others know you have sided with the inmates."</p> <p>Hulet feels if Longman were reinstated, there is risk of her returning in a "them" capacity. "I have an intelligence community who provides us with information. Optics and perception exists. My fear is that our information will dry up, will cease. We can't trust you. You have issues in your own shop."</p> <p>In cross-examination, Hulet said the basis for his recommendation to the Executive Director that Longman be terminated was that Longman hadn't accepted responsibility for her actions of August 22. He hoped she would demonstrate that in her letter, but failing that, Hulet felt the breach of trust was not reparable. Longman was in violation of a number of policies, she had been in public with known gang members, she hadn't reported the incident to her supervisor and she had put the Ministry's reputation at risk.</p> <p>When asked what made him think it was impossible to continue to employ Longman, he said it is a serious allegation when an employee is seen in circumstances as serious of this where she is intoxicated in public with an ex offender who is a gang member. Another "sub bullet" was that Hulet was concerned about RPCC's relationship with the RPS. He was also worried because it appeared McNabb was a friend and Longman had known him for a long time. Another factor in the termination was Hulet's view that Longman's comments in her September 26 email meant she thought Hulet had unreasonable expectations of her in terms of contact with people from her community. People are expected to report their relationships.</p>
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Hulet said he didn't consider less severe disciplinary action because of the nature of the situation and the breach of trust. She was in the company of ex-offenders, known gang members and the situation was a public one involving the RPS. She was aware of the policy. Even though Longman wasn't charged with a criminal offense, this situation opened the ministry and RPCC to loss of integrity. It was serious enough that other options weren't considered, especially because this was conduct in the community and Longman has not fully accepted the situation in her email.

When asked about mitigating circumstances, Hulet said he gave Cummings an opportunity to address mitigating circumstances and all Cummings raised was the fact it was unreasonable to expect Longman would not know some of her aboriginal friends would come into the facility. Hulet recognized Longman was a good employee and he allowed her to write a letter outlining her feelings. He felt Longman was well aware of the policy and on the night in question she had made a poor decision fully aware of what the policy said.

Hulet acknowledged that Longman admitted she had made a mistake in her personal life, that she cried, that she told Hulet she needed the job and that she was intoxicated when she accepted the ride home. Hulet doesn't recall Longman saying she was going through a rough time.

When asked whether he investigated whether the policies were being applied consistently to all corrections workers, Hulet said he would have had a discussion with human resources before recommending the potential range of sanctions. "I would suggest to them and they would advise. I didn't investigate other situations of breaches."

When considering the level of discipline, Hulet also considered that here had been a meeting in May about the same issue and Longman had been reprimanded about that. "In my mind this wasn't a first time situation." This was a major issue because of Longman's involvement with someone who was security threat at RPCC and Longmans lack of recognition that this individual was a security threat. Hulet was concerned he could not trust Longman to accept the employer's information about the people they had in custody.

Hulet acknowledged that the information about what had happened was not disseminated to staff and that he treated the police report as highly sensitive and didn't allow anyone to use it. He said he determined Tyrone McNabb was a gang member because the CMIS system had information of a known gang affiliation. From the report from the RPS, Hulet concluded the RPS have a file on McNabb. Hulet agreed the fact the CMIS at the time said McNabb was an NS associate may only mean he knows NS gang members. Hulet acknowledged the records do not anywhere actually say McNabb is a gang member. Hulet said there are three criteria to determining whether someone is a gang member: tattoos, gang paraphernalia and a judicial finding. If someone has all three, they are

		<p>identified as a gang member. If they have less than three, they are identified as an associate. Hulet didn't investigate whether McNabb met any of the three criteria. Hulet didn't ask Longman why she felt McNabb wasn't a gang member.</p> <p>Hulet said it wasn't his decision to terminate. It is the deputy minister who terminates. When asked who actually made the decision to terminate, Hulet said, "someone above my pay grade". Hulet met with Scriver, "provided me with the information" and Longman's email. He doesn't remember if he provided Scriver with a copy of the police Intel Report, but he provided the information he needed to be able to explain his recommendation. Hulet has file documents and an email that was circulated, but he did not prepare a report.</p> <p>Hulet said he relied partly on the Relationship Policy and on the Conflict Policy. He had read parts of them to Longman at the September 12 meeting, but he doesn't recall whether he reviewed the policies himself before he assessed what he would recommend for discipline.</p> <p>When asked to provide his understanding of the Relationship Policy, Hulet said in Longmans' case the conditions in 1.2 existed. He agreed the policy does not prohibit relationships with offenders. It requires that if there is a relationship the worker has to discuss it with the supervisor "and have awareness and understanding that satisfied sufficiently the optics in the community at large." As soon as reasonably possible once they identify they have a relationship with an offender, the worker needs to report it to a supervisor.</p>
	Scriver	<p>Scriver said the people involved in the decision to terminate Longman's employment included herself, Labour Relations, Human Resources. The RPCC "would have put forth a recommendation." Scriver, along with the Associate Deputy Minister and the Deputy Minister, made the decision to terminate. The ADM and DM relied on "our recommendations". They did not do any independent investigation.</p> <p>Scriver said the decision to terminate was taken based on Longman's length of service, the information she received, mitigating circumstances, did she acknowledge the situation, was there remorse, were there any other incidents of discipline before this, was she aware of policies, did it put the Ministry into disrepute, did it compromise the integrity of a peace officer because we are held to a higher standard. All those factors were considered.</p> <p>Scriver said she is familiar with the mitigating factors set out in the Employer's Progressive Discipline Policy. The role of the Human Resources Consultant is to point these out. Longman was given an opportunity to explain her behavior and say if there were any mitigating circumstances. The response was "This is going to be what it is going to be. I am not going to make conscious decisions about who I associate with." Scriver was concerned about this because "peace officers are held to</p>

a higher standard". They had to adhere to law and administer the law. They have care, custody and control and if they are in a situation where there is a conflict of interest or a breach of trust, "How can we be looking after someone in the Correctional Centre if we are a person of interest on the street?" "How can we administer the discipline policy when our relationship may be misconstrued or it might muddy out authority? We could put people in harm's way."

Scriver was concerned about security risks because Longman was associated with a gang member. That causes considerable concern for the safety and security of the institution. "I don't know what she might be coerced to do in terms of gang activity in the jail." There might be an incident and because of her relations with an offender, she might not report it.

The Relationships Policy is there to ensure integrity is not compromised and the Ministry is not put into disrepute. It helps employees and management understand they need to report that they have a relationship with an offender or ex-offender. The policy does not prohibit relationships. It requires the relationship be reported.

The Standards of Conduct Policy provides guidelines of "what we do and who we are". People need to know what is expected of them in terms of legislation, personal conduct, conflict of interest and avoiding breach of security.

The policies are part of the training program for corrections workers and they are available on a web site and in binders throughout the corrections centres.

Scriver said she did not consider whether something less than termination would be sufficient or consider re-employment elsewhere in government for Longman because there was no sorrow and no remorse and because Longman didn't report the relationship. She felt Longman was a person who was not demonstrating the competencies for the position and she did not want other ministries to have to hire someone like that. Longman didn't demonstrate compliance with correctional centre policies and that is a competency inherent in a Level 8 position. Longman had four years of service, this was a significant situation, she didn't acknowledge wrongdoing, she was given an opportunity to explain and she didn't exercise good judgment with her associates. Because of Longman's willingness to give up to the Regina Police Service that she is a peace officer, she put the Ministry into disrepute. The Ministry is trying to establish good relationships with the integrated units and this incident put the Ministry into a compromising position. Scriver also considered previous situations "of this nature".

On cross-examination, Scriver confirmed that the Deputy Minister did not conduct an independent investigation of this matter. She said the Deputy Minister is provided with an *Action for Approval* document prepared by

Human Resources in conjunction with Labour Relations with the Public Service Commission. Scriver said she reviewed this document. She said she also got information from Hulet. "There would have been information sent directly to Julien and he would have sent it to me." The *Action for Approval* form is the final information taken from the information provided by the RPCC. Scriver did not talk to the police herself. She did not talk to Longman. That is not her role. She spoke to Hulet, Human Resources and Labour Relations. The person in Human Resources was Janet FitzGerald. She is not sure who it was in Labour Relations.

Scriver says Longman breached the Relationship Policy because she did not report the relationship or the incident on August 22, 2008. She needed to report the incident because she was with an ex-offender who is a gang member. Scriver got the information McNabb was a gang member from Hulet by verbal report and email. She did not see any police reports and isn't sure whether she saw the CMIS database search on McNabb.

Scriver said Longman was not terminated because she was intoxicated. She was terminated because of not reporting the relationship, not reporting the incident and the mitigating factors. Longman was given an opportunity to draft a letter and in that letter she was very flippant and noncommittal saying it would be impossible not to have interaction with people with criminal backgrounds and gang affiliations. Scriver was not at the meeting where Longman had an opportunity to explain what happened. "I was provided the information on paper." Scriver admits to being advised that Longman had said she made a mistake. Scriver was concerned because Longman said she wouldn't change her relationships and interactions with people of a criminal nature.

Scriver said that in deciding termination was the appropriate response to the situation, she did not consider that Longman was First Nations, she did consider this was an isolated incident, and she considered that Longman knew the policies because she would have been exposed to them at orientation. Scriver felt there was no evidence Longman was being singled out for disciplinary action. Scriver does not recall considering that as a First Nations person it may be difficult for Longman not to come into contact with offenders or ex-offenders. The only information Scriver had with respect to Longman's state of mind the night of the incident was that Longman was intoxicated. Scriver had not been told Longman was going through a hard time or that she was going through family court. She doesn't recall whether she was told Longman had cried in the disciplinary meeting. She doesn't recall anyone telling her that Longman had said she needed the job.

Scriver concluded Longman lacked judgment based on the information Hulet provided her. The specific information on which she based her judgment was that Longman was witnessed by Regina City Police to be intoxicated walking away from a burning car with a gang person who had just got out of the correctional centre, she identified herself as a peace officer, and she chose not to report the incident to the RPCC. Longman

		<p>should have reported the relationship and she should have reported the incident. McNabb called Longman his "old lady". That shows a questionable relationship.</p> <p>From the information Scriver was given, she concluded Longman was in a relationship with an ex-offender who is a gang member. She was satisfied the investigation into the allegation was adequate. Scriver's conclusion was based on the fact Longman was out with the ex-offender and he referred to Longman as his "old lady" which was information she got from Hulet. Hulet also told Scriver about and she considered that there was another incident previously at the RPCC where information came forward about Longman's relationship with this offender. Longman had been asked about the relationship before this incident. Scriver was not aware of whether Longman had been disciplined for the previous incident.</p> <p>Scriver said whether or not Longman was in a romantic relationship with the offender, the Relationship Policy required that Longman report the incident with the police including that she had been with an ex-offender. Longman was at a scene where the police came across intoxicated people walking away from a burning car. This is a questionable event for a peace officer. Reporting the relationship is a safeguard.</p> <p>Scriver agreed that not everybody gets terminated for failure to report a relationship. It would depend on the severity of the situation. Someone being caught in a compromising position in a cell with an inmate would be serious. The Ministry has terminated corrections workers for having a common law relationship with an ex-offender in the community and not reporting it.</p>
October 15	Longman	<p>Longman never got a response to her email of September 26 and she never had any further opportunity to discuss the allegations against her. Hulet called Longman and her union representative Natalie Owl to a meeting and read her a termination letter.</p> <p>Terry Coleman of the Ministry signed a letter terminating Longman's employment:</p> <p style="padding-left: 40px;">It has been brought to my attention that on August 22, 2008, you were picked up by the police in an extremely intoxicated state, and in the company of three men, one of whom was an ex-inmate of Regina Provincial Correction Centre (RPCC) and known by the Centre to have gang affiliations. In an earlier inquiry in May, 2008, you were questioned about a possible relationship with this same inmate, at which time you admitted to knowing who he was but denied having any type of relationship with him.</p> <p style="padding-left: 40px;">At a meeting on September 12, 2008 you admitted knowing this ex-inmate and that you were intoxicated in public with him. In a subsequent letter to the employer, you stated that you recognize that your actions may have brought the Ministry into disrepute and posed a possible threat to the safety and security of the RPCC.</p> <p style="padding-left: 40px;">You have breached two Divisional Directives, "<i>Standards of Conduct for Corrections Workers</i>" and "<i>Relationships Between Corrections Employees and</i></p>

		<p><i>Offenders/Ex-Offenders</i>". You have confirmed your awareness of both. Your actions showed a complete disregard for policy and put at risk the security and credibility of the Correctional Centre and the Ministry. It is inappropriate for <i>any</i> Corrections worker, First Nations or not, to compromise the safety and integrity of the Centre by appearing intoxicated in public with ex-inmates with gang affiliations.</p> <p>As these breaches have damaged the confidence and trust necessary to maintain the standard of conduct expected of a Corrections Worker within the Ministry, your employment as a Corrections Worker with the RPCC is hereby terminated for cause effective immediately.</p> <p>Longman was confused about how the allegations kept changing. First they accused her of being in a relationship with McNabb. When there was no relationship, they accused her of being up on charges for being with a stolen car that was on fire. When it turned out there hadn't even been an arrest, then the issue became "appearing intoxicated in public with ex-inmates with gang affiliations."</p> <p>Longman doesn't remember much about this meeting other than Hulet reading the letter. She does remember asking Hulet if she could resign instead of being terminated and he said no. She asked Hulet why he asked her for the letter and then used it to terminate her. He didn't give her an answer.</p>
October 27	Osberg	<p>Shane Osberg is the Director of Disability Management Services with the Union. Before that from 2002 to 2010, Osberg was a AAA with the Union and before that was a corrections worker at the RPSS from 1986 to 2002.</p> <p>Osberg became involved in Longman's case as the AAA attached to the RPCC at the time Longman was terminated. Osberg prepared the Grievance Claim Form.</p>
October 27	Longman	<p>SGEU filed the Grievance (the "Grievance") on October 27, 2008. The Statement of Grievance says:</p> <p>Unjust termination – based on unfounded information. Employer has failed to conduct an appropriate investigation. Employer has failed to provide full disclosure of all relevant documents.</p> <p>The remedy sought is:</p> <p>Full redress including but not limited to reinstatement, to position of CW1, payment of loss wages, benefits, replacement of lost seniority.</p>
	Cummings	<p>When the Union filed the Grievance, they asked for full disclosure of all relevant documents because Hulet kept insisting there were relevant documents but that they were confidential. Hulet never did provide any additional information.</p> <p>Cummings felt the investigation was improper because the employer never spoke to anyone outside the RPS. They hadn't spoken to Tyrone McNabb or the other two men. There was a question about whether there had been a burning car and whether it was the car Longman had been riding in. Longman hadn't seen a car on fire.</p>

		Once the Grievance was filed, Cummings turned the case over to an Agreement Administration Adviser and his involvement ended.
<b>2009</b>		
Date unknown		Longman was denied employment insurance benefits and had to go on social assistance. This was very difficult for her because she was a social worker with a degree. It was embarrassing. In January 2009, she obtained employment at Touchwood Child and Family Services at Muscowegan. She worked out there during the week and came back to Regina on weekends.
January	Longman	<p>[At the hearing counsel advised me they had agreed that all evidence with respect to the Step 2 grievance process is admissible and that the parties have waived privilege to allow that to happen.]</p> <p>Longman only vaguely remembers the Step 2 Grievance Meeting. She remembers Shane Osberg attending the meeting with her. Hulet and Janet FitzGerald were there along with someone else. Longman remembers Osberg getting angry with FitzGerald because she was supposed to be at the meeting as a neutral person and she kept jumping in and attacking Longman and she wasn't listening to anything Longman said. She remembers discussion about whether the grievance was broad enough to cover discrimination claims. Longman doesn't remember discussing the August 22 incident or the police information at this meeting. Longman does remember trying to explain her family circumstances and the family court proceedings brought by her ex.</p>
February 4	Longman	<p>Osberg attended the Step 2 grievance meeting with Longman. In preparation for the meeting, from information he got from Longman and Cummings, Osberg put together a document to read at the meeting. Before the meeting, Osberg went over the original of that document with Longman. The document is typed with one handwritten notation in the body of it. Osberg made this notation when he reviewed the document with Longman. The document (with the handwritten notation underlined and in italics), sets out the Grievance Statement and Settlement Sought from the original Grievance form and then reads:</p> <p>History</p> <p>PFT employee since May 5, 2004</p> <ul style="list-style-type: none"> <li>- August 22, 2008 – Ms. Longman was getting a ride home from 3 individuals</li> <li>- Ms. Longman was off duty</li> <li>- Ms. Longman was getting a ride home as she had a few drinks and that she was unable to drive herself which show she is a responsible citizen</li> <li>- The vehicle Ms. Longman was in was stopped by [sic] the police – <u>walking – car stalled – Police thought car was stolen – it wasn't</u></li> <li>- The individuals in the vehicle were detained by Police</li> </ul>

- No one was charged with an offense
  - Ms. Longman did not display any public spectacle as is alluded to by the employer
  - Ms. Longman was given a ride home by a police officer
  - As far as Ms. Longman is aware the three individuals she was getting a ride home from did not have any gang affiliations
  - Ms. Longman is well aware of the employers Policies as she has stated
  - If Ms. Longman believed that she was in the company of gang members she would have not placed herself in that situation
  - The employer had requested that Ms. Longman write an email outlining her view of events, Ms. Longman was told in doing this she would protect her job, she complied, and this email was then used to terminate her. The email does not admit to any wrong doing, Ms. Longman only speaks to the perception of wrong doing. She goes on to talk about the challenges of a First Nations person in the workplace.
  - Separation Papers – Julien wrote that EI should contact him – The individual from EI that Ms. Longman spoke to stated that Julien had said that Ms. Longman was to report to him all individuals she knew in the Correctional Centre, she failed to do so which constitute misconduct.
  - We would like an outline from the employer where in the policy it states knowing someone verses being in a relationship with someone.
  - 2 other grievance settlements out of the ROPCC
    - o Victoria Rattray (Finley) – settlement – employee was placed on re-employment list
    - o Janean Rosin – Arbitration – employee was re-instated and presently working in another Correctional Facility
  - Arbitration Award – Lumber and Sawmill Workers Union Local 2537 vs KVP Co. Ltd. (1965) L.A.C. 73 Robinson – sets out any unilaterally policy must confirm with six general principles; 1) it must be consistent with the collective agreement, 2) it must not be unreasonable 3) it must be clear and unequivocal, 4) it must be brought to the employees attention before the company can act on it, 5) if the rule is used as a foundation for discharge, the employee must be warned that discharge may be a consequence of breaching the rule, and 6) it must be consistently enforced by the company from the time of its introduction.
1. These policies are not consistent with the CBA. Nothing in the CBA in regard to Off Duty Conduct, Policy does not follow the rules of full disclosure.
  2. Policy is unreasonable as an employee under this policy is not always aware of individuals background that they come into contact with, the policy does not outline the definition of Off Duty Conduct.
  3. this policy is not clear or unequivocal,
  4. Ms. Longman was aware of the Policies
  5. the Policy is not clear that discharge without progressive discipline is a possibility
  6. Policies are not enforced on a consistent basis which is clear in the



outcome of the above mentioned grievances.

Disclosure: as per Article 21.4 "The parties shall be required to provide full disclosure at each step of the procedure of all information available regarding the grievance." We need disclosure of the following:

- Police Report
- Investigators Report
- Updated Policies
- Witness documentation
- What areas of Policies did Ms. Longman violate?
- Clear outline of employers evidence of termination for Just Cause
- Documentation about inquiry in May 2008 which is mentioned in paragraph 1 of the termination letter dated October 15, 2008.

We would also like to state that Ms. Longman would not be opposed to being reinstated and working in another location within government.

Osberg felt that in all the circumstances, termination of Longman's employment was not appropriate. Longman had been asked to put something in writing and when she did, she was terminated. There is nothing in the policy to identify for the employer or the employee where the employer draws the line as to what is a relationship. The conduct was off duty conduct where in fact Longman didn't appear to have done anything wrong. There had been no progressive discipline. Others had received more lenient discipline. The policy was not enforced on a consistent basis.

Osberg felt the Policy interpreted as the employer interpreted it was unreasonable because an employee could be sitting in any environment and could encounter an ex offender and not even know they were an ex-offender. Osberg says he can go for a drink in any establishment in Regina and there might be one or two ex-offenders in the bar. He questions if that needs to be reported. There was a time when Osberg couldn't go to the Cornwall Centre shopping mall without meeting an ex-offender who he knew.

At the meeting, Osberg asked for particulars of how the Employer said Longman had violated the policy. He wanted their evidence of termination for just cause. Between October 15, 2008 and the Step 2 meeting on February 4, the employer had not provided Osberg with any documents to substantiate their allegations of just cause.

At the end of Osberg's presentation at the Step 2 meeting, Longman was asked if she had anything else to add. Longman referred to mitigating factors. She said she had been having a hard time because a friend and coworker had died and that she was going through family court at the time. She admitted to drinking too much under these stresses. Longman said when asked she told the police where she worked. She didn't lie. The police officer said he would make a report and he did.

		<p>Longman said she was always professional at the RPCC. She did report a relationship when she discovered her ex-husband was in the RPCC. She didn't understand that she had to report everyone she knew in any way. She asked what she had to report – relationships or everyone she knew. Longman said she knew the people she took the ride with but she didn't have a relationship with any of them. She had previously told McFadyen she knew one of them, but did not have a relationship.</p> <p>At the Step 2 meeting, Julien Hulet presented Osberg with a "Police Report". Osberg produced the so-called police report and it is a copy of the Hulet Document. Hulet presented this document as "the" police report. Osberg had no reason to question this because the document says "Regina Police Service" at the top. Osberg's notes of the meeting say, "Police Report – submitted by Cst. MacLean".</p> <p>Osberg never did receive any investigation reports or witness documentation. The Employer did not disclose the Zimmer email of September 5, 2008 or the CMIS printouts to the Union. Osberg never saw the actual Regina Police Service Intel Report until the day of the hearing. Apart from the Hulet Document, the Union never received any other disclosure from the Employer to support Longman's termination.</p>
March 9	Osberg	<p>The Employer provided a letter written by Diane Gurski, Human Resources Consultant, containing the Employer's decision from the Step 2 meeting. Ms. Gurski did not testify at the hearing. The Employer's reasons in the letter say:</p> <p>Ms. Longman was terminated October 15, 2008 from her permanent Corrections Worker position at the Regina Provincial Correctional Centre (RPCC) due to irreparably breaching the confidence and trust necessary to maintain the standard of conduct as a Corrections Worker. The Correctional Centre was advised by the Regina Police Service that Ms. Longman was identified by the police in public in an intoxicated state in the company of three men, one of whom was a former inmate of RPCC and known to have gang affiliations.</p> <p>The Union stated its belief that Ms. Longman should not have been terminated. The Union requested full disclosure and was provided the information requested. The Union identified two similar cases in which the employees were reinstated to positions elsewhere.</p> <p>In addition, the Union referenced the two divisional policies Ms. Longman allegedly breached, the <i>Standards of Conduct for Corrections Staff</i> and <i>Relationships Between Corrections Employees and Offenders/Ex-offenders</i>. Although Ms. Longman was aware of these policies, the Union stated that they do not clearly outline off-duty misconduct.</p> <p>Ms. Longman stated that at the time of the incident, she was going through a difficult time and was drinking more because of this and making poor choices. She admitted she knew the ex-offender in her company on the night of the incident, but denied having a relationship with him or knowing of any gang affiliations he may have. She stated he was someone she knew who was giving her a ride home.</p> <p>After discussions at a meeting of September 12, 2008, Ms. Longman was asked</p>

to send an email to Julien Hulet, Director of RPCC to provide any further explanation or mitigating circumstances. At the Step 2 meeting, Ms. Longman stated she did not understand why she was sending the email as she had not done anything wrong. She stated the email was actually written by her shop steward.

Management provided a summary of the incident and its rationale for the termination. In May, 2008, Ms. Longman was questioned about an alleged relationship with an offender at RPCC. She denied any relationship as was provided a copy of Divisional Policy 0020, *Relationships between Corrections Employees [sic] and Offenders/Ex-Offenders*, outlining the requirement for Corrections Workers to report any connection to or relationship with an offender or ex-offender. The principles contained in this policy also state:

"Corrections and Public Safety staff are expected to display professional conduct and maintain relationships which are fair, impartial and free of impropriety in all dealing with offenders and ex-offenders currently or formerly under the authority of the Department of Corrections and Public Safety."

The Regina Police submitted an Intel Report that on August 22, 2008, Leigh Longman was found in the company of known gang members. She was intoxicated and voluntarily told police that she was a Correctional Officer at RPCC. One of men she was with was the former offender whom she had been questioned about in May, 2008, while he was incarcerated.

Management explained that it is inappropriate and a breach of security for a Corrections Worker to compromise the safety and integrity of the centre by socializing with ex-inmates with gang affiliations. It is also a breach of the *Standards of conduct for Corrections Staff* divisional policy to be publicly intoxicated.

In relation to Ms. Longman's knowledge of the ex-offender's gang affiliation, in the summary of the interview with Ms. Longman on September 12, 2008, she clearly stated that she was aware that RPCC and the Regina Police had identified this man as a gang member but she asserted at that time that she believed he was not. At the Step 2 meeting, Ms. Longman denied having known that he was identified by RPCC and police as having gang affiliations. This contradiction impacts the credibility of Ms. Longman's statements.

A review of the facts suggests that by Ms. Longman's own admission, she knew of the policy but did not disclose the incident to management as required by the policy. She appears to take no responsibility for the breach. She stated at the Step 2 meeting that she believes she did nothing wrong. I do not find Ms. Longman to be credible when she asserts that she did not know the intent of *Relationships Between Corrections Employees and Offenders/Ex-Offenders* and the *Standards of Conduct for Correctional Officers* policy. I find this to be a completely unreasonable assertion.

As to the administration of the discipline process, management has the right to move to a greater sanction based on the severity of the infraction and seriousness of the breach. As it is in this case, a breach of the *Relationships Between Corrections Employees and Offenders/Ex-Offenders* and the *Standards of Conduct for Correctional Officers* policy is especially significant given the nature of the work, the reputation of the ministry and the trust necessary between RPCC staff and the Regina Police Service in ensuring the administration of the care, and custody of offenders within our facilities and ex-offenders in the community.

The question is whether there is sufficient mitigation, considering all of the factors indicated above, to overturn Ms. Longman's termination. Ultimately I do not

		<p>believe that Ms. Longman can return to work at any Ministry correctional Centre as the necessary trust relationship has been irrevocably broken. She has clearly and significantly breached the <i>Relationships Between Corrections Employees and Offenders/Ex-Offenders</i> and the <i>Standards of Conduct for Correctional Officers</i> policy and failed to meet the standard necessary for a Peace Officer.</p> <p>With respect to these arguments, it is clear for the employer's perspective, that the policy is consistent with the higher standard of conduct required of Corrections Workers, both within legislation and arbitral jurisprudence. This standard has been consistently upheld by the Ministry.</p> <p>Therefore, I must deny this grievance at Step 2.</p> <p>The letter refers to a Regina Police Intel Report. The only report Osberg received from the Employer was the Hulet Document. The only evidence the Employer provided to support the position that Longman was "socializing with ex-inmates with gang affiliations" was the Hulet Document. No independent corroboration was ever provided. The letter says Longman volunteered she worked at the RPCC. She had told them that she answered the officer when she was asked where she worked.</p> <p>The fact Longman was intoxicated at the time of the August 22, 2008 incident was not to Osberg's recollection a specific topic of discussion at the Step 2 meeting. Osberg was surprised to see the reference to "publicly intoxicated" in the letter. He said if being intoxicated in public is a disciplinable offense, then there are "a whole bunch of corrections workers" who should be fired, especially those who leave work in their uniforms and go out drinking in public until closing time. Longman was at a private residence and then taking a ride home in a private vehicle.</p> <p>Osberg disagreed with the Employer's assertion that Longman was contradictory. Osberg said Longman always said she didn't believe McNabb was a gang member. At some point she became aware the RPCC had identified him as gang "affiliated" but that is not the same thing. The system didn't identify McNabb as a gang member. It said he was gang affiliated. Those are different things.</p> <p>Longman never denied knowing the Relationship Policy. Osberg felt, however, there was a question about whether what had happened needed to be disclosed. There was an incident that didn't involve any criminal activity. There ended up being no problems. Longman wasn't in a relationship with an ex-offender. It was difficult to see what Longman had done that was wrong.</p> <p>Osberg feels that with no definitions of things like relationships and no guidelines, the Employer can target people. It allows the Employer to treat people differently because the policy is so broad.</p>
	Longman	<p>In the months following her termination, Longman developed a romantic relationship with Tyrone McNabb. McNabb felt bad because he felt responsible for ruining Longman's life. At the time of the incident in August, Longman had been seeing someone. When Longman was fired and accused of having a relationship with McNabb, it looked like Longman was</p>

		<p>cheating on her boyfriend and that caused their relationship with her boyfriend to break up. McNabb felt responsible. Longman had lost her job and relationship and ended up developing a relationship with McNabb.</p> <p>The relationship was off and on for about a year. They lived together for a short time. Longman finally broke it off because McNabb was constantly going back to his two exes.</p> <p>Tyrone McNabb is not a gang member. Longman does not know why RPCC identified him as a gang member. McNabb doesn't have any gang tattoos. Longman never observed McNabb engage in any gang activity in her presence. Longman has seen many situations where even if you are related to a gang member you are tagged as being gang associated.</p>
April / May	Longman	In April or May 2009, Longman moved to Muscowegan.
2010		Longman has been sober since January 2010.
January	Longman	Longman moved to Saskatoon.
March	Longman	<p>Longman is currently living in Saskatoon, taking a Master's Degree program in Social Work through the University of Regina. Before she entered this program she worked for three and a half years with Indian Child and Family Services at Touchwood Child and Family Services.</p> <p>Longman married in March 2011.</p>
	Longman	Over the four years since she was terminated, Longman has applied for many government jobs and she hasn't even received an interview. The termination has meant her education means nothing. She doesn't understand why one mistake is impacting the rest of her life while so many others have made worse mistakes and they are still working. Longman feels singled out.

15. In this evidence summary, I have not included the evidence with respect to how the Employer's policies have been applied to other employees of the Ministry. I will briefly deal with that evidence separately elsewhere.

### III. Parties' Positions

16. The Employer argues there was just cause for termination of Longman's employment because:

- Longman failed to report a relationship with Tyrone McNabb who was an ex-offender and gang member.
- Longman should have reported the August 22, 2008 incident to the Employer because the circumstances created a potential for risk. Those circumstances were:
  - Longman is reported to be in a relationship with McNabb in May of 2008. She says she only "knew of" him.

- Four months later on August 22, Longman is picked up by police, in an intoxicated state, with McNabb.
- The Regina Police contact RPCC to report their concern that a corrections worker is socializing with a known gang member.
- Longman reports nothing to her Employer.
- McNabb is known to the RPCC to have gang affiliations.
- As part of her job as a corrections worker, Longman would know, indeed would be expected to know, the gang affiliations of the inmates.
- It is not reasonable for the Employer to take a chance that this incident did not create a security risk or a safety risk.

17. The Union argues:

- The Employer engaged in bad faith conduct during the investigation and has treated the Grievor in a discriminatory manner.
- The Employer has not established facts that constitute wrongdoing by the Grievor.
- The Employer has not established breach of any policy.
- The Employer cannot rely on the policies in any event because they violate the *KVP* principles.
- In any event, the penalty imposed was too severe given the conduct in question, especially in light of mitigating factors.

18. Given the parties' positions on numerous issues, I will deal with the details of their positions as they arise in the analysis.

#### **IV. Collective Agreement Provisions and Employer Policy**

##### The Collective Bargaining Agreement

19. Article 20.2 of the CBA reads:

##### 20.2 Dismissal For Cause Only

A) An employee shall not be dismissed **without good and sufficient cause to be stated in writing in the dismissal notice.**

B) A copy of the dismissal notice given to any employee shall be supplied, upon request of the employee, to the Union. [emphasis added]

20. The Employer is therefore restricted to the reasons for dismissal set out in writing in the dismissal notice. In this case, the dismissal notice is the letter of termination dated October 15, 2008. I repeat its content here:

It has been brought to my attention that on August 22, 2008, you were picked up by the police in an extremely intoxicated state, and in the company of three men, one of whom was an ex-inmate of Regina Provincial Correction Centre (RPCC) and known by the Centre to have gang affiliations. In an earlier inquiry in May, 2008, you were questioned

about a possible relationship with this same inmate, at which time you admitted to knowing who he was but denied having any type of relationship with him.

At a meeting on September 12, 2008 you admitted knowing this ex-inmate and that you were intoxicated in public with him. In a subsequent letter to the employer, you stated that you recognize that your actions may have brought the Ministry into disrepute and posed a possible threat to the safety and security of the RPCC.

You have breached two Divisional Directives, "*Standards of Conduct for Corrections Workers*" and "*Relationships Between Corrections Employees and Offenders/Ex-Offenders*". You have confirmed your awareness of both. Your actions showed a complete disregard for policy and put at risk the security and credibility of the Correctional Centre and the Ministry. It is inappropriate for any Corrections worker, First Nations or not, to compromise the safety and integrity of the Centre by appearing intoxicated in public with ex-inmates with gang affiliations.

As these breaches have damaged the confidence and trust necessary to maintain the standard of conduct expected of a Corrections Worker within the Ministry, your employment as a Corrections Worker with the RPCC is hereby terminated for cause effective immediately. [emphasis added]

21. The letter says the termination is because of breach of the two "Divisional Directives:

- The *Relationships Between Corrections Employees and Offenders/Ex-Offenders Policy* (the "Relationship Policy"), and
- The *Standards of Conduct for Corrections Workers Policy* (the "Conduct Policy").

22. Because of these breaches, the Grievor is said to have put at risk the security and credibility of the RPCC and the Ministry and compromised the safety and integrity of the RPCC. This said to be because the Grievor appeared intoxicated in public with ex-inmates with gang affiliations.

23. Finally, termination is said to be justified because the breaches have damaged the confidence and trust necessary to maintain the standard of conduct expected of a Corrections Worker.

#### The Relationship Policy

24. The **Purpose** of the Relationship Policy is stated to be:

The purpose of this policy is to help employees recognize when the association with an offender or ex-offender might compromise public trust in an employee and situations in which staff may, by virtue of their position or the exercise of their judgement/authority [sic], give or receive, or appear to give or receive an unlawful benefit for advantage.

25. Under **Principles**, staff are expected to:

- Display professional conduct and maintain relationships which are fair, impartial and free of impropriety in all dealings with offenders and ex-offenders currently or formerly under the authority of the Department of Corrections and Public Safety.
- Ensure that personal business or private ventures are not in conflict or appear to be in conflict with an employee's duties and overall responsibilities as a public servant.

26. The **Standards** section of the Relationship Policy reads:

- 1.1 All relationships between Corrections staff and offenders are expected to be of a professional nature and in accordance with the job description of the employee.
- 1.2 Any employee who knowingly forms or continues a relationship or connection of a personal or business nature with an offender or ex-offender, or with someone known to be in a close relationship with an offender or ex-offender which might reasonably be perceived or might lead to:
  1. A conflict of interest; or
  2. A breach of security and safety of individuals; or
  3. Negative impact on the Department of Corrections and Public Safety

**The employee is responsible for discussing the situation with the immediate supervisor or Unit Manager.**

**Employees are expected:**

- To not engage in business transactions with offenders currently serving a sentence or ex-offenders where negotiations respecting a transaction commenced or occurred while the ex-offender was a serving offender or remanded inmate;
- To not establish or encourage personal relationships with offenders or ex-offenders, the nature of which would tend to place the employee in a compromising position within the Department of Corrections and Public Safety, or otherwise could raise doubt respecting the integrity of the employee.

**NOTE: If there is uncertainty as to the propriety of the relationship, the employee shall consult the immediate supervisor or alternatively with a more senior Corrections Worker unit manager for guidance. The person responding to the staff shall take into consideration whether or not the offender or ex-offender is a family member, friend of a family member or whether or not the relationship existed prior to the offender's involvement in the justice system. [emphasis in original]**

...

27. The Relationship Policy has within it a section entitled **Investigation and Fact Finding Process**. The relevant portions for this situation include:

- 2.1 In accordance with Section 803 of the *Public Service commission Human Resource Manual – Corrective Discipline*, when there is any allegation of wrongdoing, as outlined above, the work unit supervisor or designate shall, without delay, meet with the person reporting to the alleged breach or any other person who may have relevant information.
- 2.2 Where there is a complaint about the conduct of a correctional employee, the work unit supervisor or designate, will promptly advise the correctional employee, against whom the allegation was made, of the nature of the allegation. A summary of the substance of information collected will be provided to the correctional employee for his or her review and consideration.
- 2.3 If the correctional employee requests an adjournment of the matter to allow him or her to prepare a response, an adjournment of the discussion will not be unreasonably withheld.



2.4 The work unit supervisor will not make a decision on the outcome of the matter, until the correctional employee alleged to commit an offence has had a reasonable opportunity to:

- Consider the information;
- Seek counsel, union representation;
- Make a reply to the allegations; and
- Have the response heard.

2.5 After hearing the response of the correctional employee accused of wrongdoing and carefully reviewing, in good faith, all the evidence presented, the work unit supervisor will make a finding and determine an appropriate course of action. This will be done in consultation with Human Resource Branch.

2.6 Notwithstanding the obligation to notify the correctional employee, notification may be withheld, where the work unit supervisor believes it may jeopardize the investigation of the complaint.

2.7 The work unit supervisor, in consultation with Human Resource Branch, will determine if it is necessary to suspend the correctional employee with pay pending completion of the investigation. ...

2.8 ...

2.9 If, after a complete investigation, examination and hearing of all evidence, the correctional employee is found not to have violated provisions of this divisional policy, the Director will dismiss the complaint. ...

2.10 If, after complete investigation, examination and hearing of all evidence, the correctional employee is found to have violated provisions of this policy, the Director will advise the correctional employee of the findings and the reason upon which the findings are based. The Director, or designate, may:

- Give the staff member a verbal reprimand;
- Give the staff member a written reprimand; or
- Suspend the staff member indefinitely with pay pending further investigation; or;
- Recommend to the Executive Director of Corrections and Public Safety that more severe disciplinary actions be undertaken against the staff member.

2.11 The Director will report the occurrence in writing, giving full details, to the Executive Director of Corrections, as soon as reasonably possible.

### The Conduct Policy

28. The **Purpose** of the Conduct Policy is said to be:

The purpose of this policy is to provide Standards of Conduct for Management and Staff of Corrections Division, Department of Justice.

29. Under **Standards**, section 2.0, the Conduct Policy says this under *Personal Conduct*:

- Corrections staff are responsible for conducting themselves at all times in a manner likely to gain respect for Corrections Division, and to act with integrity, impartiality, and without prejudice in matters which pertain to the Division.

and this under section 3.0 *Performance of Duty*:

- 1.1 Corrections staff are responsible for respecting the authority of Acts and Regulations and collaborating in their application, and complying with any legal directive, written or otherwise, issued by their superiors.
- 1.2 Corrections staff are responsible for taking necessary action to prevent, and shall report, any actual or potential violation of the law or misconduct on the part of a staff member or inmate/offender.

30. The Conduct Policy then contains *Appendix A* which is said to be a list of guidelines that may be amended from time to time and:

... Employees whose actions contravene these guidelines may be subject to disciplinary action up to and including discharge, dependent on the nature and impact of the action taken by the employee.

31. *Appendix A* says this under *Personal Conduct*:

Staff are expected to:

- Display appearance and/or deportment becoming to their role as a Peace Officer while on duty, or while in uniform and shall wear uniform properly.
- Utilize proper channels when obtaining goods or services produced by offender labour.

Staff have:

- **A responsibility to conduct themselves while on or off duty in a way that does not compromise the ability of the Corrections Division to accomplish its mandate or undermine the public's confidence in the employees' ability to discharge their responsibilities properly.**
- A responsibility to try to resolve issues or concerns through normal established channels prior to referring matters to outside agencies.

32. *Appendix A* says this under *Performance if Duty*:

Staff are expected to:

- Conform to or apply as directed, any Department Directive, Standing order, or other directive as it relates to his or her duty in maintaining operation of facility and regional programming.
- Properly safeguard all documents, reports, directives, manuals or other information of the department.
- Promptly report any work accident in relation to inmate care,
- Ensure that avoidable waste, loss or damage to any property or security equipment of the Department, or the property of any inmate in the course of the performance of his/her duty does not occur.
- Remain at their assigned post or place of duty unless authorized to leave by their supervisor.
- Provide information, and/or submit required reports for any authorized investigation relating to official duties and operations of the Corrections Division.
- **Act in such a manner in the performance of their duties not likely to bring disrepute to Corrections Division; e.g., oppressive or abusive conduct or language towards other employees, members of the police or employees of other government department/agencies.**

- Promptly and diligently perform required duties of care, custody and control in relation to operational functioning as a member of the Corrections Division.
- Provide accurate oral or written statement or entry in any official document or record pertaining to official duties as a peace officer.
- Properly handle, appropriate or apply any public money or property or any money/property of any other person(s) coming into one's possession in the course of duty or by reason of his or her being a member of the Corrections Branch, Department of Justice.
- Report to a superior any contraband found in the possession of another employee, inmate or member of the public.
- Remain awake and alert on assigned security post or place of duty, other than during authorized sleep over.
- Perform their duty in a cautious and careful fashion so as to minimize risk of causing bodily harm or death to any employee or client of the Department, or any other person(s) either directly or indirectly.
- Report immediately any complaint by an offender against another offender or a staff member.
- Report or supply promptly any evidence of mistreatment of offenders by any employee to designated officials.
- Treat offenders with respect and dignity in accordance with mandate of providing humane care, custody and control.

Staff have:

- A responsibility to not solicit or accept from any person any contraband, gift or gratuity, except where required in the line of duty.
- A responsibility to use only reasonable and necessary force when required, in the carrying out of his/her legal duties.
- A responsibility to take appropriate action when an inmate/offender:
  - Escapes or attempts to escape.
  - Attacks an employee, other offender, or member of the public.
  - Destroys the property of the Department or any other agency of the Crown.
  - Engages in any action likely to endanger life or property.
- A responsibility to provide complete, accurate and thorough information in the preparation of court reports. [emphasis added]

33. I have quoted extensively from the Conduct Policy to demonstrate the broad reaching nature of the policy.

34. *Appendix B to the Conduct Policy deals with Selection of Sanctions and Summary of Corrective Discipline Process:*

Selection of Sanctions

1. Management acknowledges that the vast majority of employees will choose to adopt acceptable behaviours and recognize their importance to the operations of the Corrections Division. Management also acknowledges that infractions of this code of conduct will be few in number.

**Where such infractions occur, the Public Service policy of Corrective Discipline shall apply.**

2. The following principles shall guide the manner in which the public service Corrective Discipline policy is administered in Corrections Division:
  - **Disciplinary action taken will be corrective in nature rather than punitive.** Employees who demonstrate misconduct will be treated in a manner which is intended to prompt them to correct their behaviour.
  - When disciplinary action is taken, management shall be able to demonstrate just cause.
  - The concept of progressive discipline will apply except for major violations and severe acts of misconduct which warrant discharge as an initial response.
  - The employees dignity will be respected during the investigation of an alleged incident of misconduct and in any resultant disciplinary action.
  - Loss of income during the investigation of an alleged incident of misconduct and while awaiting the conclusion of any disciplinary action, shall be minimized.
  - Where a unionized employee may be subject to disciplinary action, the employee will be informed that he/she may have union representation if that is desired.

Summary of Corrective Discipline Process

The following presents a brief summary of Corrective Discipline Process as establishes by the Public Service commission. It is **only** [emphasis on original] a summary and thus not exhaustive in content. Full details are available in the Public Service Commission corrective Discipline policy available through the supervisor.

1. With both major and minor conduct infractions the following factors must be taken into account in arriving at an appropriate discipline sanction:
  - a. The seriousness of the offense in terms of its impact operations.
  - b. performance record of the employee.
  - c. mitigating circumstances surrounding the misconduct in question.
2. With minor conduct infraction, the mere pointing out of the occurrence will normally lead to its correction by an employee. There may be instances where, in spite of such oral direction the unacceptable conduct continues. In such instances, formal counseling is appropriate. One purpose of such formal counseling is to set out in writing the standard of behaviour that is required and why it is required. Such formal counseling will not make reference to possible disciplinary action; the objective is simply to indicate the performance required at work. Consequently, formal counseling is not considered disciplinary action. If at some later time, corrective discipline is required, formal counseling will serve to indicate the employee was aware of the work requirement contravened.
3. With unsuccessful formal counselling [sic] and/or the occurrence of a major infraction, the eight stage discipline process as outlined in Government Discipline Policy should be initiated. In summary:

1. Determine what occurred.
  2. Seek advice from Human Resources.
  3. Conduct investigative hearing.
  4. Investigate Employee's explanation.
  5. Consider mitigating factors.
  6. Record results of investigation.
  7. Give management decision, including:
    - a. The behaviour henceforth required.
    - b. Why the behaviour is necessary.
    - c. Consequences of further disciplinary infractions.
    - d. Set date for Discipline Review.
  8. Conduct Discipline Review wherein progress towards adopting correct behaviour is acknowledged or to present a further opportunity to improve performance.
4. The Corrective Discipline policy applied in the public service contains the following disciplinary sanctions:
- **Written Reprimands:**  
Use where formal counseling has failed or for a moderately severe first offence.
  - **Suspension Without Pay:**  
Where lesser disciplinary sanctions have failed or for a serious first offence.
  - **Discharge:**  
Where lesser disciplinary sanctions have failed or for a very serious first offence.
- [emphasis added]

### The Discipline Policy

35. The Employer's Corrective Discipline Policy (the "Discipline Policy") is more than 30 pages long and outlines the Employer's approach to discipline. At the outset it says this:

The employer's policy of Corrective Discipline only applies to instances of **culpable** misconduct; culpable misconduct is behaviour that has the following characteristics:

- the employee knows, or could reasonably be expected to know what is required
- the employee is capable of carrying out what is required
- the employee chooses to perform in a manner other than as required

The employer's attempts to correct misconduct by employees will include: the application of certain discipline sanctions; identifying incidents of misconduct to employees as they occur as well as the behaviour required; prompting the employee to adopt the required behaviour and acknowledge progress in this

regard, indicating the job consequences that may occur if the required behaviour is not adopted.

The employer views the discipline situation as essentially a problem for the employee to resolve; failure to do so will place employment at risk.

36. Under the heading, *How Does One Distinguish Between Non-Competence/Incapacity/Personal Problems and Misconduct?*, the following appears:

Only the employee can provide the basis for his acts. It is the employee's responsibility to explain and substantiate the reasons for unacceptable performance. Management will fully investigate such explanations. Based on the results of this investigation, a decision will be made as to whether Corrective Discipline is appropriate or if some other program should be used to improve the situation. In reaching this decision, the question that must be answered is:

-in the face of the explanation provided by the employee and as otherwise determined, would a reasonable person conclude that the unacceptable behaviour has its basis in misconduct?

In seeking to an answer to this question, the manager should discuss the case with personnel advisors before making a decision on how the matter is to be dealt with. [emphasis in original]

37. The Discipline Policy in some detail sets out basic principles with respect to management of employee conduct:

- The Policy recognizes that employees should be made aware of work rules applicable to them.
- The Policy says that rules should be enforced promptly, consistently and without discrimination.
- The Policy says that formal counseling is usually a first step in dealing with potential discipline. In such case, the supervisor should meet with the employee, point out the rule or norm that is being contravened, set out the behaviour that is required and determine a date for review of performance.
- The general approach of the supervisor in dealing with a discipline situation is as follows:
  - a. determine from the employee the reasons for the unacceptable behaviour
  - b. set out the behaviour required on the job and why it is required i.e. the adverse effect of the misconduct on the work unit performance
  - c. identify the gap between required behaviour and the behaviour of the employee
  - d. indicate behaviour that is required henceforth

- e. indicate the seriousness with which management views the misconduct and the possible job consequences of continuing misconduct
  - f. acknowledge the employee's progress in improving performance and where possible, encourage employee's efforts to improve
  - g. take those steps to limit the impact of misconduct on operations
- With respect to what to do when a discipline situation occurs, the policy says it may be sufficient to deal with the matter via formal counselling, but where counseling has failed or a moderately serious first offence appears to have occurred, then formal disciplinary action may be appropriate. The Policy sets out 8 steps in this process:
  - Determine what occurred by attempting to establish and verify the actual occurrence of an apparent disciplinary infraction.
  - Seek advice on the case on how to respond to the situation.
  - Conduct a discipline hearing by informing the employee you wish to meet in private (with union representation) to discuss an apparent disciplinary infraction. At the meeting, the supervisor is to set out the evidence available on the alleged misconduct and ask for the employee's explanation. Explanations or absence of explanations should be recorded. Clarifying questions should be asked. The purpose is to attempt to verify what occurred and obtain the employee's explanation.
  - Investigate employee's explanation. Take steps to determine the validity of the employee's explanation and carry out further investigation of surrounding circumstances.
  - Consider mitigating factors that may impact the level of discipline to be imposed.
  - Record the results of the investigation.
  - Give management's decision to the employee including.
  - Conduct discipline review by acknowledging progress in adopting the correct behaviour or presenting further opportunity to improve performance.
- With respect to disciplinary sanctions, the Policy includes written reprimand, suspension and discharge. Under the heading of "Discharge" the Policy says:

Discharge: the involuntary termination of employment. Normally used for a **very serious first offence**, i.e. theft, assault, serious insubordination or in those circumstances where the employee meets the following criteria:

the offence and the employee's work record indicate he is no longer fit employment

there is little likelihood the employee will rehabilitate himself

earlier corrective efforts by management have failed. [bolding added]

- The Policy contains an Appendix E that says the discipline response should be tailored to the case at hand keeping in mind the seriousness of the offence in terms of its impact on operations, the discipline record of the employee and any mitigating circumstances surrounding the misconduct in question. The Appendix lists various kinds of misconduct and makes suggestions as to the appropriate disciplinary action in each case, but suggests the supervisor consult the personnel advisor for advice. The Appendix contains a sliding scale for misconduct. The Appendix says the list is not intended to be all inclusive, but gives an indication of the range of responses for various forms of misconduct. There are four sections. Section 3 includes misconduct warranting a two to five day suspension up to discharge:

- Theft of government property on the work site.
- Falsifying government record or expense account.
- Obtaining material or services by fraud.
- Obtaining sick leave or other leave by fraud.
- Major negligence - \$100 or more.
- An act or practice that brings the public service into disrepute
- Refusal to obey an order – insubordination
- Encouraging others to commit infractions the same or similar to those listed in 2 and 3.

Misconduct warranting a longer suspension up to discharge is Section 4 and includes:

- Forging of government document.
- Assault.
- Bribery – offered or accepted.
- Fighting.
- Breach of oath of secrecy of office.
- Conviction of an indictable offence against the employer.
- Conflict of interest with employment.
- Encouraging others to commit infractions the same or similar to those listed in 3 and 4.

- The Discipline Policy says this about mitigating factors:

The following factors **must be considered** when a discipline sanction is contemplated. The **answers to these questions** may result in the application of a lesser sanction than would normally apply or in no disciplinary action being taken.



- What is the nature of the employee's previous work record? Where this record is good it will stand in the employee's favour; where bad, the opposite. Consideration should also be given to the employee's length of service and whether the offense is an isolated incident within the employee's overall employment record.
- Was the employee aware of the rule contravened; was it posted, generally known and enforced consistently? Is there any evidence that the employee is being discriminated against, singled out for disciplinary action?
- Was the misconduct promptly dealt with; failure to respond promptly to an offense leads one to question the seriousness of the offense itself and may mislead the employee as to what is acceptable behaviour.
- Was the employee given the opportunity to explain his behaviour; was the explanation investigated and was it valid?
- Are personal animosities affecting dispassionate evaluation of [sic] the case; was the misconduct provoked?
- Are there any circumstances which suggest that deficient behaviour was not fully deliberate, e.g. employee under emotional strain due to personal problems – marital, financial, the employee misunderstood the order, etc.
- How serious is the offense in terms of its impact on program delivery within the work unit in question? [emphasis added]

## **V. The Issues**

38. The broad issues to be resolved are:

1. Did the Employer improperly investigate allegations against the Grievor and/or engage in bad faith conduct and if so, what are the consequences of that?
2. Did the Grievor engage in conduct deserving of a disciplinary response by the Employer?
3. If so, was termination of the Grievor's employment the appropriate remedy?
4. If termination of the Grievor's employment was excessive, what alternative measure would be just and reasonable?

## **VI. Onus and Standard of Proof**

39. The onus of proof in cases of discipline and discharge rests with the Employer. The Employer must establish the Grievor has committed an employment offence, i.e. that the Grievor has engaged in conduct that warrants a disciplinary response, and that the discipline imposed was just and reasonable in the circumstances.
40. Everyone agrees the standard of proof throughout is balance of probabilities.
41. The Employer points out that, while the Employer bears the ultimate legal burden, the Grievor is responsible to place any evidence that is critical to her case before the arbitrator. The Employer also correctly points out that once the Employer establishes a prima facie case, the evidentiary burden shifts to the Grievor. Brown and Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> Edition, para.

7:2300. I will keep these principles in mind as I review the evidence and arguments in this case.

42. The onus of proof in relation to the claim of discrimination lies with the Union.
43. The Union says the Employer is obligated to also prove facts relevant to the assessment of penalty. As recently discussed by a Board of Arbitration chaired by Bill Hood in *Saskatchewan Assn. of Health Organizations* (2011), 203 L.A.C. (4th) 1, 104 C.L.A.S. 265 (Hood), at paras. 57-60:

Grievances challenging discharge or discipline are an exception to the general rule that he who asserts a claim must prove it. Generally speaking, in discipline grievances the employer bears the onus to justify the discipline imposed.[...] This onus includes the burden of establishing the factual basis upon which the employer relies to support the discipline imposed. [...]

The standard of proof in arbitration grievances is the civil standard of proof on a balance of probabilities. This standard applies in all cases of discharge or discipline.

The Employer does not take dispute that it bears this burden, but submits that once it has proved Curtis committed the acts alleged and satisfies the Board that such conduct is deserving of the discipline meted out (in this case discharge), the onus then shifts to the Union to establish the grounds on which it is relying to set aside the termination and support the other lesser penalty to be substituted.

We do not agree that the onus shifts to the Union to support a penalty lesser than the discipline imposed. In our view, the Employer, in order to satisfy its onus that discharge is justified in the circumstances, must also prove on a balance of probabilities there are no facts or insufficient facts to support the substitution of a lesser penalty. To put this another way, the Employer's onus to justify discharge subsumes by inference that the Employer must demonstrate the factors relied upon to support the penalty imposed, which mitigate against a lesser penalty. **The Employer bears the onus to prove those facts necessary to show the discipline levied was just and reasonable. The onus does not shift to the Union to prove those facts that show a lesser penalty is just and reasonable and should be substituted.** [emphasis added, citations omitted]

44. The Union submits the Employer bears an evidentiary burden of proof with respect to all three questions prescribed by *Wm. Scott*, which would include an assessment of mitigating factors – one of which is whether the Grievor was singled out for excessively harsh or discriminatory treatment compared to her coworkers: *U.S.W.A., Local 3257 v. Steel Equipment Co. Ltd.* (1964), 14 L.A.C. 356 (Reville).
45. The Employer submits the Union bears the onus to prove mitigating factors. In determining who bears the onus with respect to mitigating factors, it is important to consider the Employer's own Discipline Policy quoted above. The Discipline Policy actually requires that the listed mitigating factors "must be considered when a discipline sanction is contemplated." Since it will be the Employer who will be contemplating the discipline sanctions, it is the Employer under their own policy who must actively address their mind to answer the questions posed in their own policy. To the extent the Employer has put this obligation on itself, the policy puts the onus on the Employer to ask the questions and explore at least those mitigating factors listed in their policy. This does not mean the Union does not bear some responsibility as

well, but the policy puts the onus on the Employer to explore the mitigating factors in the first instance.

## **VII. The Events**

46. The parties are in significant disagreement about what has actually been proven by the evidence. It is therefore necessary for me to examine significant aspects of the evidence and making findings accordingly.

### Credibility

47. The parties have made various submissions about credibility and reliability of evidence. I will deal with some specific allegations as they arise in the analysis of the evidence on the various points in contention and provide my reasons for those but will make some general comments here.

48. The Employer says credibility is an important factor. The Employer cites *Faryna v. Chorney* [1952] 2 D.L.R. 354 (B.C.C.A) at p. 356-7:

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such as case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

49. The Employer says the following factors weigh against Longman's credibility:

- Longman's explanation of McNabb's use of the term "old lady" to mean something other than "girlfriend" or "wife".
- Longman's denial that she knew McNabb was identified by RPCC as a gang member.
- Longman's testimony that she only knew of McNabb at the time of their August 22, 2008 encounter.

50. Longman never said McNabb used the term "old lady". She said people use old lady on the street to describe women in various roles. The Employer never called any actual evidence to refute this. As will be seen below, I have found the evidence before me does not establish that Longman knew, before August 22, 2008, that RPCC had identified McNabb as a gang affiliate. Likewise, I have found the evidence does not establish that as of August 22, 2008, Longman had any appreciable relationship with McNabb.

51. The Employer suggests that if Longman knew McNabb was not a gang member then that meant he had to be more than a casual acquaintance. When Longman said she didn't think McNabb was a gang member, however, the Employer did not ask her any questions about how she knew McNabb wasn't a gang member. There may have been any number of explanations for Longman's belief. For instance, she may have discussed that with McNabb's sister. However, no one ever asked Longman about that.

52. I found Leigh Longman overall to be a forthright and credible witness. Her story has remained consistent throughout all stages of this matter from the

time events occurred, through pre-termination meetings with management, through the grievance process and at the arbitration hearing. She did not exaggerate or embellish her testimony and was quite forthright about her involvement in the August 22, 2008 incident. She was forthright in admitting that after her termination she developed a relationship with Tyrone McNabb, a fact she could probably have withheld if she had chosen to do so since no one appears to have known about it. Her emotional responses to questions were appropriate to the content; and while demeanor is by no means determinative of credibility, her demeanor as she testified gave no indication she was either withholding information or embellishing her testimony. She answered the questions directly and without hesitation. She readily admitted if she was not sure of an answer or didn't recall.

53. I have serious concerns with Julien Hulet's evidence. I find it disturbing that he would not have considered his actions in creating the Hulet Document to be inappropriate. I will discuss the detail of this elsewhere, but he put this document to several people as if it were a report from the Regina City Police and in that document there were allegations that were not in the actual police document. I also have some concern, which I also discuss elsewhere, that Hulet was not accurate in what he recorded was said at the September 12, 2008 meeting with Longman.
54. I found McFadyen to be forthright and credible and I accept his evidence to the extent he remembers events.
55. The Employer says I should consider Shane Osberg's testimony with some suspicion because he is predisposed to casting the Employer in an unfavorable light. Suffice it to say here that, while unfortunate, it was clear to me in this hearing that pretty much all witnesses appeared predisposed to casting those "on the other side" in an unfavorable light. This is unfortunate because if everyone had taken a step back and tried to view the situation objectively, perhaps it would never have reached the stage it has.
56. I will comment about other issues of credibility and reliability of evidence throughout this Award.

#### Hearsay Evidence

57. Much of the Employer's case is based on hearsay evidence, sometimes several steps removed from the actual event in question. The Employer submits that arbitral case law is clear that hearsay evidence is admissible in arbitration, particularly where there is an express statutory provision such as s. 25(2)(c) of *The Trade Union Act*. The Employer says refusal to consider such evidence may constitute an error of law: *Brown and Beatty*, para. 1:5220.
58. The Union says many decisions have identified the importance of giving no weight to hearsay evidence on a crucial question unless it is corroborated or there is no evidence presented that contradicts it: see *Public Service Employee Relations Commission v. British Columbia Government & Service*

*Employees Union (Bains Grievance)*, [2003] B.C.C.A.A.A. No. 197 (QL) (Nordlinger) (at paras. 49-51):

**I agree with the Union that hearsay evidence is admissible in arbitrations, but that its evidentiary value must be weighed carefully.** The Union relies on *Board of School Trustees of School District 68 (Nanaimo) v. Canadian Union of Public Employees, Local 606 (Mid-Island School Employees)*, a decision of the Labour Relations Board before Vice-Chairman Baigent, who stated the following, at page 5:

"Because strict adherence to the hearsay rule militates against the informal and expedited nature of arbitration hearings, arbitration boards have traditionally attempted to **reconcile the competing interests by permitting hearsay evidence to be adduced but developing two restricting rules on its use.** Those rules can be stated as follows:

(a) **Uncorroborated hearsay evidence should not be preferred to direct sworn testimony.**

(b) **Hearsay evidence alone should not be admitted to establish a crucial and central question.**

**...an arbitration Board cannot accept hearsay evidence over sworn direct testimony unless it has been corroborated by other evidence.** As well, **when an arbitration board allows hearsay evidence on a crucial issue, that evidence should be given no weight unless it is corroborated by other direct sworn testimony.** In the Panel's view **this approach does not offend the legislature's broad mandate** of Section 93(2) of the Labour Code to 'have regard to the real substance of the matters in dispute'. Indeed, the failure of the Arbitration Board in this case to observe either of those rules ensured that 'the respective merit of the positions of the parties' was not considered."

Many decisions have identified the importance of giving no weight to hearsay evidence on a crucial question unless it is corroborated or where there is no evidence presented that contradicts it. *The Government of the Province of British Columbia v. B.C. Government Employees Union (Keough Grievance)*, (1995) B.C.L.R.B. No. 275/95, at page 7.

I find that the hearsay evidence adduced through Mr. Black as to Mr. Badhesha's comment to him is on **a crucial question in this arbitration**. It is **the only evidence** against the Grievor to support the allegation of passing on confidential information to a Correctional Officer under investigation, which is relied on by the Employer for his discipline. **As the hearsay evidence is not corroborated, I cannot give that evidence any weight in these circumstances.** [emphasis added]

59. Furthermore, the Union says the Employer cannot rely solely on a third party investigation report to establish just cause for discipline. *Saskatoon (City) v. Canadian Union of Public Employees (Zapski Grievance)*, [2011] S.L.A.A. No. 14 (QL) (Hood) (at para.73-4)

First, it is useful to determine what the Grievor did that was in the City's view deserving of discipline. Both MacKenzie, the investigator, and Jorgenson, on behalf of the City, determined the Grievor's actions in the workplace were inappropriate. .... In my view, the Report and MacKenzie's evidence are relevant only for the purpose of establishing that the City undertook a formal investigation of Dierker's complaint by an external person as contemplated by the Workplace Harassment Policy. **MacKenzie's findings of misconduct on the part of the Grievor are not proof of such facts in this hearing. Such evidence is hearsay.** Furthermore, MacKenzie's determination that the behaviour of the Grievor breached the Workplace Harassment Policy and the human rights legislation (which may or may not have been part of her mandate from the City or

contemplated by her investigative role in the Workplace Harassment Policy), is a **determination that is to be made by this arbitration.**

Put simply, the investigation report is nothing more than an explanation as to why the employer levied discipline. **The employer, in this case the City, must still prove to the arbitrator the facts giving rise to the discipline imposed by the City. This can be done only by way of direct, personal evidence that is tested under cross-examination in an arbitration hearing.** An arbitrator may come to a different determination of the facts than an investigator retained by the employer. The arbitration forum is different, the evidence is taken under oath, the evidence is subjected to the scrutiny of cross-examination, and, as in this case, the evidence relied upon by the investigator may be evidence that is different than that which is presented to the arbitrator. [emphasis added]

60. The Union has accurately quoted the principles in relation to acceptance of hearsay in arbitration proceedings. Facts critical to any party's case must be established by clear and cogent evidence. Uncorroborated hearsay is not acceptable even in the more informal arbitration proceeding, especially on a critical point. Likewise, it is clear the Employer cannot rely on hearsay contained in a report, but must actually prove the facts alleged as the basis for discipline or discharge.
61. Specifically with respect to the Employer's allegation that McNabb was a known gang member, the Employer acknowledges that the CMIS record is hearsay, but argues it is admissible as an exception to the hearsay rule as a business record by virtue of s. 52(1) of The Evidence Act:
- 52(1) Subject to this section, a copy of an entry in a record kept by a business is admissible in any proceeding as proof, in the absence of evidence to the contrary, of the entry, and of the acts, transactions, occurrences and events recorded in the entry.
- (2) A copy of an entry in a record kept by a business shall not be received in evidence pursuant to this section unless it is first proved that:
- (a) the record was, at the time of the making of the entry, one of the ordinary records of the business;
  - (b) the entry was made in the usual and ordinary course of business;
  - (c) the record is in the custody or control of the business or its successor; and
  - (d) the copy is a true copy.
- (3) The proof described in subsection (2) may be given by the manager or accountant of the business or by any person employed by the business who has knowledge of the record, and may be given orally or by affidavit.
62. Assuming the CMIS records are business records for the purposes of s. 52, they are prima facie admissible as proof of the acts, transactions, occurrences and events recorded in the entry. The information recorded in this entry is that Tyrone McNabb "...self admits to being an NS associate and has been since the late ninety's". This does not prove McNabb is a gang member. It proves that at some unknown point in the past McNabb told an unknown person he was an "NS associate and had been since the late ninety's". It doesn't even prove McNabb was an NS associate, only that he said he was or that someone interpreted what McNabb said them to mean he said he was; and it doesn't prove what "NS associate" meant. The business

record is also incomplete because the Employer did not produce whatever RPCC record exists from which the information was taken to enter into the system for use in the CMIS reports.

63. In addition, the record is only admissible as proof of the acts, transactions, occurrences or events in the absence of evidence to the contrary. I have before me Longman's testimony that she knew McNabb was not a gang member. The CMIS report, therefore, doesn't prove McNabb was a gang member.

#### The August 22, 2008 Incident

64. I accept Longman's evidence that on the night in question she had been drinking at her home and was intoxicated. She was invited to meet her friend, Tiara McNabb, at a party but when she got there, her friend was not there. Longman didn't want to stay at the party and she either asked for or was offered a ride home by one of the three men who left the party with her. They didn't get very far when the car broke down. They got out and began to walk. They had gone about three quarters of a block when they were surrounded by police.
65. I also accept Longman's evidence about her interaction with MacLean. I accept that she told MacLean where she worked because he asked her the question. I accept her evidence that MacLean told her he was going to report the incident to the RPCC.
66. MacLean says he and Cst. Sterling spoke with Longman. Cst. Sterling prepared the report of the incident, but that report is not in evidence and Cst. Sterling did not testify. MacLean's recollections were based on his few notes from that evening (which say nothing about the detail) and on his review of Sterling's report that was never produced in evidence. MacLean didn't deny asking Longman where she worked. He didn't remember. He didn't deny telling Longman he was going to call the RPCC. He didn't recall that.
67. MacLean says he submitted an "internal document" about what Longman "had told me and what she was involved with". He said he was concerned about security. In cross-examination he said he submitted this report by email. This internal document or email was never produced in evidence.
68. MacLean produced an internal Regina Police Service document (the "Intel Report"). He did not prepare this document. It purports to be prepared by "Investigator: Cst. J.P. Wadsworth #627." Wadsworth did not testify at this hearing. MacLean's evidence largely came from reading a report not in evidence written by someone else who didn't testify.
69. In the end, the only cogent evidence before me about what happened on the night of August 22, 2008, is Longman's evidence. The Employer did not obtain or produce Cst. Sterling's report of the August 22 incident. If they got permission to disclose the Intel Report (which is totally hearsay), they should have had no trouble obtaining the police report about the actual incident. Likewise, MacLean's email is not before me either, nor did either Sterling or

Wadsworth who were the authors of important documents, testify. One would have expected an employer seriously concerned about the incident in question would have taken steps to collect these important documents and put them before the employee for explanation and to put them before the arbitrator at the hearing. It is difficult to understand why, if the documents were so important to showing what happened, the Employer did not get permission from the RPS to share the actual documents, even on a confidential basis, with the Union and/or at this arbitration. Hearsay of the kind relied upon is simply not acceptable.

70. The logical inference to be drawn from these circumstances is that the contents of the documents and or the evidence of the authors would not have supported the Employer's case. The RPS already knew about the incident. Given the stated significant concern of RPCC about how this incident might impact safety and security, one would have expected they would have brought forward direct evidence about the incident.

#### Was the car on fire?

71. Longman testified she did not see a car on fire and she never saw or smelled smoke. MacLean said he was responding to a report of a car on fire, but in the end he never saw the car. The suggestion the car was on fire came from persons and documents not in evidence before me.
72. Employer witnesses repeated that there was a car on fire several times during their testimony, repeating that Longman had been found on the street, near a burning car in the company of ex-inmates who were gang members. While there may have been a burning car, in this proceeding the Employer has not met the evidentiary burden of proving there was a burning car involved in the incident. To the extent the allegation there was a burning car contributed to the Employer's concerns about the August 22 incident, there is no basis before me for that concern.

#### The "old lady" allegation

73. Longman says she never once heard McNabb call her "old lady". As soon as the police came to the scene, they separated and cuffed Longman and the three men and each person was put into a different vehicle. Longman was alone in the vehicle with MacLean.
74. MacLean says the police detained Longman and the three men and fairly quickly separated them. In direct examination, he said a man he believes was Tyrone McNabb kept calling Longman his "old lady". He doesn't remember Longman responding to this. In cross-examination he said he heard the man he believes to be McNabb say, "That's my old lady."
75. Zimmer's email, which is hearsay, says Longman was close to McNabb and that he continually called Longman his old lady. Zimmer declined to even say where he got his information. There is no direct evidence that McNabb was close to Longman at any time during the incident or that he "continually" called Longman his old lady.



76. In the Intel Report which is also hearsay, it attributes MacLean as having said: "During our interview with them Tyrone continuously called Leigh his old lady". As I have said, in both his direct testimony and in cross-examination, MacLean said he heard a man he believes was Tyrone McNabb call Longman his "old lady". MacLean didn't even state the basis of his belief. MacLean's belief it was Tyrone McNabb who said the words does not meet the burden on the Employer to establish on a balance of probabilities that even if the words "old lady" were said by someone, the speaker was actually McNabb, the words were actually intended to refer to Longman and in the context the words were actually meant to mean a "girlfriend" relationship existed.

Did Longman volunteer to MacLean that she worked at RPCC?

77. The Employer (in particular Scriver) alleges that somehow Longman did something inappropriate by admitting to MacLean that she worked at the RPCC.

78. Longman's evidence is that MacLean asked her where she worked and she told him the truth. MacLean doesn't remember whether he asked Longman or she volunteered that information. Sagel's September 12 notes say, "The police asked Leigh where she worked and she was truthful with them and told them she was a CW at RCC." There is nothing at all in Hulet's September 12 memorandum about this question.

79. I find on balance that Longman told Maclean where she worked because he asked her where she worked.

What was Longman's "relationship" with McNabb as of August 22, 2008?

80. The Employer says that at the September 12, 2008 meeting, Longman attempted to explain the situation and said:

- She had known McNabb as a friend for three years.
- She knows he is not a gang member.
- Everyone on the streets calls women "old lady".

81. Based on this, counsel argues, the Employer reasonably concluded it was more likely than not that Longman was in fact in a relationship with McNabb. The relationship either already existed in May of 2008 or developed between May and August. If it existed in May, then Longman was not forthcoming at the meeting with McFadyen.

82. Tis argument flies in the face of Hulet's testimony that he actually believed Longman that she just getting a ride home.

83. McFadyen testified that in May 2008, he had "information" that Longman may be in a relationship with Tyrone McNabb. There is nothing in evidence about that "information". There is no evidence as to what that information was, where it came from or whether it had been checked out. McFadyen wasn't quite sure who, but he said the "information" came to him from someone in

the RPCC Intelligence Unit who had received it through the police community. McFadyen didn't remember whether he had told Longman the source of the information was an anonymous call from the community. The actual source of the information is not before me, nor are any of the details of what this information involved other than the suggestion Longman "may be in a relationship with a known offender".

84. Longman told McFadyen she knew of McNabb, but there was no relationship. McFadyen said he was satisfied with this response and felt Longman could carry on with her work as a corrections worker. It is clear McFadyen did not think the fact Longman knew McNabb was sufficient that any steps had to be taken to accommodate the situation. McFadyen didn't ask Longman any questions about how she knew McNabb, for how long or in what capacity. It is obvious McFadyen did not consider merely knowing someone or knowing of someone was sufficient to trigger concern under the Relationship Policy. In the letter he said "...if a relationship had existed that you were required to report it to the employer..."
85. I am also satisfied, given the vehemence with which the Employer pushed the "gang member" allegations in the hearing, that if McFadyen was concerned about or had actually talked to Longman in May about concerns McNabb was a gang member, he would have testified to that at the hearing. McFadyen said nothing about gangs at the hearing.
86. Longman testified she had never socialized with or drank with McNabb. She only knew McNabb because he was Tiara's brother. Longman drank occasionally with Tiara.
87. Sagel's notes from the September 12 meeting say, "Reference was made to a letter of reprimand which Leigh received in May, 2008, where she admitted to knowing Tyrone but denied that there was a 'relationship' with him." Hulet's memorandum says Longman said that in May she, "explained having known who Tyrone was but that she did not have a relationship with this individual."
88. At the hearing, Longman volunteered that sometime after she was terminated, she did develop a relationship with McNabb. She said McNabb felt bad because he felt responsible for ruining Longman's life. Longman had a boyfriend at the time and because Longman was fired for breaching the relationship policy, her boyfriend accused her of cheating and they broke up.
89. The Employer says Longman's testimony was the first time the Employer had heard there had been a relationship and says:
  - The Employer ought to have been allowed the opportunity to look into this "coincidence".
  - The Employer should have been able to ask questions such as:
    - When did the romantic relationship begin and when exactly did they start living together?
    - What circumstances lead to their cohabitation?

- If the Grievor was in a romantic relationship with someone other than the offender why did she leave that relationship for McNabb?
- Why did her boyfriend not believe her when she said she didn't have a relationship with McNabb?
- When and where did she share the information that she lost her job with McNabb?
- Why would she share the information that she lost her job with McNabb?
- Why would she share this information with someone who she knows only as an acquaintance?
- While some of these questions were asked in cross examination, the Employer had no opportunity to test the veracity of the answers.
- Article 21.4 of the CBA requires full disclosure by the parties at each step of the procedure of all information available regarding the grievance. The information that the Grievor developed a relationship with McNabb in a relatively short period after the August 2008 incident was relevant to the grievance and in good faith ought to have been disclosed to the Employer. The fact the Union chose not to disclose this information at any time before the arbitration suggests the Union did not want to give the Employer an opportunity to look into this information.

90. There is nothing before me to suggest the Union knew about Longman's relationship with McNabb before Longman testified to it at the arbitration hearing. The Employer had full opportunity to cross-examine Longman about this admission which she freely made during the hearing. At the hearing the Employer did not raise any concerns about possible breach of Article 21.4 of the CBA. The Employer did not raise any concerns about being caught by surprise by this information. If the Employer felt they needed to look into this new information, the proper course would have been to raise the issue and ask for an adjournment to undertake inquiries before cross-examination. The Employer made no such request. The Employer chose which questions to ask in cross-examination and could have asked all the questioned posed above at that time.

91. The Employer suggests in any event that Longman's evidence she developed a relationship with McNabb after she was terminated negatively impacts her credibility on the question of whether she had a relationship with McNabb before August 22, 2008. In my view Longman's admission actually positively impacts her credibility. There was no reason for Longman to volunteer that she had eventually developed a romantic relationship with McNabb after she was terminated. Without lying, she could have kept that information private. She candidly admitted the fact and explained how it had happened. She was

genuinely upset about the fact she'd not only lost her job, but also her boyfriend, over allegations she was in a relationship with McNabb.

92. In the end, I find the evidence in this hearing establishes the following with respect to any relationship between Longman and McNabb:

- As of May 2008, Longman knew McNabb because he was Tiara McNabb's brother. Longman sometimes went drinking with Tiara. Longman didn't socialize with McNabb. That did not change between May 1 and August 22, 2008.
- The August 22 meeting with McNabb was a chance encounter because they both happened to end up at the same house. Longman was intoxicated.
- At most, the fact Longman had met McNabb before contributed to the decision, however it occurred, that the three men would give Longman a ride home.
- Longman did not have a romantic relationship with McNabb at any time before August 22, 2008.
- Longman did not have any appreciable social relationship with McNabb before August 22, 2008.

When did Longman know RPCC had identified McNabb as a gang member?

93. The Employer suggests Longman should have known McNabb was identified as gang affiliated because of the May 1, 2008 meeting with McFadyen. There is nothing in McFadyen's evidence or in the May 5, 2008 letter to suggest there was any concern at that time about McNabb being gang affiliated. Longman says McFadyen did not mention anything about McNabb being a gang member during the meeting. I am satisfied Longman did not learn about the gang affiliation allegations in May, 2008.

94. The Employer says Longman should have known McNabb was identified as a gang member because a search of the CMIS system at the RPCC would identify McNabb as gang affiliated. The information about McNabb on the system as of September 9, 2008 when Hulet conducted a search said only this:

Tyrone self admits to being an NS associate and has been since the late ninety's.

95. Both Longman and Cummings testified that it would be inappropriate for a corrections worker to go into the CMIS to check out the information about an offender or ex-offender just because they knew or knew of that person. Scriver confirmed this. I am therefore satisfied Longman did not do a CMIS search with respect to McNabb, so she could not have learned about the alleged gang affiliation from that source. Indeed, if she had done a search simply because she knew McNabb, she would have engaged in unacceptable conduct.

96. Zimmer said he prepared a monthly "gang report" listing all gang associated inmates in each unit. He said this went out to everyone at the RPCC by email. He was unsure of when this started. Not even one example of this report was submitted in evidence much less the relevant reports from the time. In any event, Longman did not work on the unit where McNabb was housed. There would have been little or no reason for her to specifically pay attention to reports from other units.

97. Hulet's September 12 notes say:

Are you aware that Tyrone McNabb is a gang member?

Ms. Longman identified that she knows Tyrone and that he is not a gang member. The information that the Police have is wrong and Tyrone should not be labeled as a gang member.

Are you aware that RPCC identified Tyrone McNabb as a gang member?

Ms. Longman identified that she knows that RPCC and RPS identify Tyrone McNabb as a gang member but she knows that he is not.

98. Longman testified that when Hulet asked her if she knew McNabb was a gang member, she said she didn't think McNabb was a gang member.

99. Sagel's notes of the September 12, 2008 meeting say Longman said McNabb "is not a gang member, although she knew RCC had identified him as one." On all the actual evidence, I am satisfied it is more likely than not that the first Longman knew the RPCC had identified McNabb as a gang member was when Hulet raised it with her at the September 9, 2008 meeting when he suspended her. The reason she knew on September 12 that RPCC identified Tyrone McNabb as a gang member was because Hulet had talked about her being with a gang member when he suspended her on September 9 and because the fake Hulet Document put in front of Longman that day appeared to suggest the Regina Police also identified McNabb as a gang member.

## 2. Was Tyrone McNabb a gang member?

100. I note at the outset that the Employer witnesses and documents constantly use the terms "gang associate", "gang affiliate" and "gang member" interchangeably and repeatedly suggest McNabb was a "gang member". It is important to look at the actual evidence in this regard.

101. In his evidence, McFadyen never mentioned anything at all about gang membership or affiliation.

102. There is nothing in MacLean's evidence to suggest he knew or suspected Tyrone McNabb was gang affiliated or a gang member.

103. There is nothing in the Regina Integrated Intelligence Unit report to suggest McNabb was gang affiliated or a gang member.

104. There is no evidence before me that McNabb demonstrated even one of the three criteria for gang affiliation identified by Hulet, i.e. tattoos, paraphernalia or a court judgment.

105. Then there is the CMIS report. Zimmer didn't even remember how the terms "associate" and "affiliate" and "member" were used to describe gangs in 2008. Zimmer never disclosed the content of the interaction with McNabb in which McNabb "admits to being an NS associate and has been since the late ninety's". There is no evidence of when this admission was made, to whom it was made or the circumstances of the admission. This could mean McNabb told someone at the RPCC he was related to someone in a gang so he would not be placed in a unit with rival gang members. It could mean he had a friend who was in a gang. I am satisfied, however, that it is more likely than not that if McNabb had admitted to being a gang member or if he had the three gang indicia, the CMIS report would have reflected that he is identified as a gang member and not that he is an associate. Zimmer also admitted that sometimes he has thought an inmate was one thing and it turned out they were something else. The CMIS report does not prove McNabb was a gang member.
106. In terms of the weight to be given to the CMIS report, one must look at the purpose of the information on the CMIS system and how the information gets there. The "gang" information is there to assist the RPCC in assessing the risks to inmates and staff. If any information, whether verified or not, came to the attention of RPCC personnel, it would be put into the system as an alert to raise possible concerns. Cummings testified, and the Employer did not challenge this testimony, that if an inmate even says they know someone in a gang, the CMIS is updated to say they have a gang affiliation.
107. Zimmer says he received information from a confidential source that Longman was "hanging around with a gang member". He said he was not at liberty to disclose the source of his information. He said he wasn't even able to disclose the Integrated Intelligence Unit report at the time because he didn't have permission of the author. His own email, however, establishes he did in fact disclose the report to Hulet (he attached it to the email) and Hulet says he got permission to share the information. I note this report in any event says nothing about gang affiliation or gang membership. Zimmer says he was called to the Regina Police Service but wouldn't disclose the name of the person who called him or anything about what they discussed.
108. Zimmer never investigated the report he received. He didn't speak to Longman about the report. He just felt the need to pass the information along to management who then ran with it.
109. The Employer argues it was important for the integrity of collaboration between the RPCC and other agencies such as the RPS and RCMP that the Intel Report be kept confidential. The document itself says:

RESTRICTED FOR ACCREDITED POLICE PERSONNEL

This document is the property of the Regina Integrated Intelligence Unit and the information is supplied for intelligence purposes. IT MUST NOT BE PLACED IN INVESTIGATIONAL FILES

110. The document contains "information ...supplied for intelligence purposes". It does not contain evidence on which any police service can rely.
111. Another disturbing feature of the September 12 meeting is Cummings' evidence, which I accept, that Hulet kept saying "There's more here than I can divulge," but that Longman was seen in the company of known gang members.
112. A close examination of Zimmer's email to Hulet on September 5, 2008, reveals that the Intel Report is about the incident of August 22, 2008. The Intel Report itself confirms this. The information about alleged gang memberships is Zimmer's own information. Zimmer says, "one of the four subjects involved, Tyrone McNabb, is known to myself to be active NS and has been since the late nineties." This wording comes directly from the CMIS report about which I have already commented.
113. Zimmer also speaks of Longman "socializing with known gang members." There is no evidence McNabb is a gang member. Zimmer uses the plural "members", but there is no evidence there were other gang members either. When asked where in the Intel Report it says Longman was close to Tyrone McNabb, Zimmer said he guessed that was information he obtained at the meeting with RPS, the same meeting about which he refused earlier to provide any information. There is no evidence before me about what happened at the RPS meeting and I cannot make fact findings about someone's guesses.
114. One question I am left with is that if what happened with Longman was so serious, why Zimmer and Hulet would not have taken steps to get detailed information from their source, get permission to share that information and then put the "smoking gun" to Longman. Their professed security concerns do not trump the requirement that the Employer properly investigate allegations against an employee and prove those allegations in a proceeding challenging a termination.
115. The Employer has not established on a balance of probabilities that Tyrone McNabb was a gang member.

### **VIII. The Employer's Investigation Process and Decision to Terminate**

116. The Union submits:
- There is an obligation of fair dealing in the administration of the discipline articles of the CBA. In *Re Greater Toronto Airport Authority and Public Service Alliance Canada, Local 0004 (C.B. Grievance)* (2010), 191 L.A.C. (4th) 371 (Shime), affirmed in relevant part, [2011] O.J. No. 358 (Ont. Div. Ct.) Arbitrator Shime said that:  

Good faith, in my view, does not cease once the bargaining ends and a collective agreement is signed. It would be completely antithetical to the Code to bargain the provisions of a collective agreement in good faith and not administer them in

the same manner. Accordingly, I find that there is an implied obligation in the GTAA to administer the collective agreement in good faith." (at p.103)

- The evidence that came to light during the hearing – and in particular the evidence respecting Hulet's fabrication of the police report and its subsequent use to extract an admission from the grievor that was then used to justify her termination – demonstrates that the Employer has breached the obligation to administer the CBA in a reasonable manner. Falsification of a document used in an investigation, and provided to the Union purportedly in satisfaction of a disclosure obligation, can be characterized as bad faith conduct.
- The Employer's investigation was fundamentally flawed and breached the Employer's obligation to act fairly because:
  - The Employer took the Intel Report at face value without conducting any independent investigation of its own into the alleged misconduct.
  - They put the false report to Longman as if it was the Regina Police who had identified McNabb as a gang member to which Longman then responded that the police had it wrong.
  - The Employer accorded no weight to the Grievor's explanation, and did not investigate whether her version of events was truthful.
  - Hulet created a fake "police report" that included information from MacLean, but also attributed information that McNabb was a gang member to the Regina Police when that information came to Hulet from Zimmer who took that information from the CMIS database and no other source.
- Hulet admits, as corroborated by his notes of the September 12, 2008 meeting, that he used the false document in that meeting. Hulet presented the fake document to the Union on at least two occasions as though it was an authentic police report. In particular, this document was provided to the Union during the grievance process in response to the Union's request for full disclosure under Article 21.4 of the CBA.
- In part because of these defects in the Employer's investigation, the evidence disclosed that as the allegations against Longman were communicated up the chain of management in RPCC, key details were omitted or misstated, and others were exaggerated, leading to a distorted version of the facts being presented to upper management to justify Longman's termination. A good example is Heather Scriver's comment that the Grievor "gave up" that she was a Corrections Worker to the police right away, which Scriver felt demonstrated a lack of integrity. According to Longman, she provided this information to MacLean because he asked her where she worked, and she was not going to lie to the police. The evidence demonstrated that the Grievor gave this information to the Employer during the investigation, yet it was ignored.



- The most damaging example is the fabricated information that Longman was hanging round with known gang members. In fact, the actual police report contains no information identifying any of the men as a gang member. The only information that Tyrone McNabb was a gang member is the CMIS report that says he self-identified as an NS associate, which Zimmer testified was where he got the information he included in his email to Hulet. In the actual police report the only person for whom there is a file number is Tyrone McNabb, which Hulet said in his testimony indicates that the person is a "person of interest" to the police. It is notable that there is no such marker beside Ms. Longman's name. Yet Scriver insisted in her testimony that Ms. Longman was terminated because she was a "person of interest" to the police who maintained an association with known gang members, which, again, led Scriver to conclude that Longman could not continue in employment as a Corrections Worker and had to be dismissed.
117. The Employer argues:
- The Hulet Document was merely a summary of the Regina Police information that Hulet created to share with Longman at the September 12, 2008 meeting. He just took off anything that was not pertinent. He submitted it to Longman and explained it was information he had received from the Regina Police.
  - There is nothing to suggest Hulet did this with any intent to deceive, mislead or withhold any information. He was simply protecting the original document. There is nothing in the Hulet Document that is misleading. The information on the document came from the Regina Police, including the fact Longman was seen in the company of known gang member(s).
118. The Relationship Policy, Conduct Policy and Discipline Policy all have provisions in them with respect to the Employer's obligations when a potential breach of policy is reported. I have set out those provisions in Section IV of this Award.
119. The Relationship Policy has a section on *Investigation and Fact Finding Process*. It refers to the Discipline Policy, but says:
- The supervisor is to "promptly advise the correctional employee of the allegation" and provide them with a "summary of the substance of information collected".
  - The supervisor is not to make a decision on the outcome of the matter until the worker has had an opportunity to consider the information, seek counsel or union representation, make a reply to the allegations and have the response heard.
  - The supervisor is expected to carefully review, "in good faith" all the evidence collected. The policy calls for a "complete investigation, examination and hearing of all evidence".

- The Director is to consider verbal reprimand, written reprimand or recommend to the Executive Director that more severe disciplinary action be undertaken. This suggests progressive discipline.
  - The Director is to report the occurrence in writing, giving full details, to the Executive Director.
120. The Conduct Policy says that in the case of infractions, the eight step Corrective Discipline Policy applies, but has its own provisions as well:
- It says disciplinary action will be corrective rather than punitive.
  - Management must demonstrate just cause for disciplinary action.
  - Progressive discipline will apply except for major violations and severe acts of misconduct.
  - In assessing appropriate discipline, the Employer will consider the seriousness of the offense in terms of impact on operations, the performance record of the employee and mitigating circumstances.
  - The range of disciplinary sanctions is said to be written reprimand, suspension without pay and discharge.
121. The Discipline Policy says:
- It applies to culpable misconduct.
  - Management will fully investigate an employee's explanations for their acts. The question is whether a reasonable person would conclude that the unacceptable behaviour has its basis in misconduct?
  - Rules should be enforced promptly, consistently and without discrimination.
  - The supervisor is to determine from the employee the reasons for the unacceptable behaviour.
  - The supervisor is to determine what occurred by attempting to establish and verify the actual occurrence of an apparent disciplinary infraction.
  - Conduct a discipline hearing by informing the employee you wish to meet in private (with union representation) to discuss an apparent disciplinary infraction. At the meeting, the supervisor is to set out the evidence available on the alleged misconduct and ask for the employee's explanation. Explanations or absence of explanations should be recorded. Clarifying questions should be asked. The purpose is to attempt to verify what occurred and obtain the employee's explanation.
  - Investigate employee's explanation. Take steps to determine the validity of the employee's explanation and carry out further investigation of surrounding circumstances.
  - Consider mitigating factors that may impact the level of discipline to be imposed.

- Record the results of the investigation.
- Give management's decision to the employee.

122. I will now examine the Employer's process in detail light of these policy requirements.

123. Hulet said when he first learned about the August 22 incident his immediate concern was that he feared the RPCC's relationship with the RPS was jeopardized because Longman had been found in the company "of a known gang member". Hulet's concern was Longman's off duty conduct.

124. I have already noted there is no credible evidence before me that McNabb was a gang member. The only evidence the RPCC had at the time was that their CMIS system said McNabb had at some point told some unknown person that he was "an NS affiliate". If the Employer even looked into that statement further, they haven't shared what they found as a result.

125. Hulet's investigation consisted of the following:

- He read Zimmer's email and the Intel Report.
- He gathered information about McNabb's placement when he was in the RPCC. That information isn't in evidence.
- He searched the CMIS on September 9, 2008 and discovered it said McNabb admitted to being "an NS associate" and that McNabb had been released on July 7, 2008.
- Hulet wasn't sure but he might have consulted Longman's personnel file to see if there was previous discipline and he may have consulted Human Resources and he may have given Heather Scriver a head's up.

126. With this information only, Hulet suspended Longman with pay on September 9, 2008 and set up a meeting for September 12. In his notice to Longman about this, he refers to her "off duty conduct" being the reason. When he met with Longman to give her the suspension letter, he told her he had received a report from RPS that she had been charged with burning a stolen car.

127. There is nothing to suggest Hulet did any of the following:

- Ask Zimmer from whom and where he got the information about gang membership.
- Ask Zimmer who he talked to at RPS or about the content of his discussions with the RPS.
- Talk to anyone at the RPS or do anything else to verify the alleged information from the RPS.
- Obtain any direct police reports about what happened or interview any witnesses.
- Give Longman a complete opportunity to respond to the allegations.

128. While he kept saying his issue was Longman's off duty conduct of being intoxicated with a known gang member, Hulet's evidence made it clear he felt any contact with an offender or ex-offender should be completely avoided. He kept saying if she had offender friends, then he couldn't trust her. On the other hand, he repeatedly said the policy does not prohibit relationships and he was not saying she could not see her friends. "The issue was her off duty conduct with a gang member."
129. With Longman now suspended, Hulet created the Hulet Document and prepared to meet with Longman on September 12.
130. Hulet and Zimmer both emphasized in their testimony that when they receive confidential information from a third party like the RPS, they need permission from that third party to share that information with anyone else. Hulet said he received approval to use the information in the RPS Intel Report. With this approval, one wonders why it took until this arbitration hearing before the Employer actually shared the Intel Report with Longman and the Union. Since he had permission, Hulet could have used the report at the time. If Hulet was concerned about sharing the actual document, he nevertheless did have permission to use the information. He could have told Longman and the Union that he had received a report but that he wasn't comfortable sharing that report so he would share with them the text of the pertinent part of the report. Hulet didn't do that either.
131. Instead, Hulet produced a document that purports to be a report of the Regina Police Service. Hulet says this document was his "interpretation" of the Intel Report.
132. The first paragraph of the document says:

On 22-aug-2008 Cst. R. MacLean submitted an Intel Report to R.I.I.U. regarding Leigh Longman. Leigh was seen in the company of known gang members(s). She was intoxicated and voluntarily told police that she was a Correctional Officer at RPCC. Members of the RPS expressed their concerns to corrections regarding Leigh Longman. [emphasis added]
133. There is nothing at all in the Intel Report to suggest Longman was in the company of known gang members.
134. While Hulet suggests he didn't present the document he created to Longman as a Regina Police Service report, the evidence points to the contrary.
135. Looking at the document itself, it is titled "Regina Police Service" and even has the RPS address at the top. If it was just intended to be a summary of information from the Regina Police, why wasn't it in memo form saying "Summary of Information from Regina Police Service"? Why does the document include the Regina Police Service address? Why does it contain information not included in the Intel Report, specifically information about alleged "known gang member(s) that is so crucial to the Employer's position? I have concluded it is more likely than not the document was set up the way it

- was because it was intended Longman and her Union representatives believe it was an actual Regina Police Service report.
136. Longman testified that Hulet showed her and Cummings a report he said he received from the Regina Police Service. Longman identified the Hulet Document as the document presented. Cummings said Hulet presented a document Hulet said was a report he received from the RPS. Cummings identified the Hulet Document. Neither Cummings nor Longman had seen the actual Intel Report before this hearing.
  137. At the Step 2 grievance meeting, Hulet presented the Hulet Document to Shane Osberg as "the" police report. Osberg's copy of the document contains his notation that he received the document at the Step 2 meeting on February 4, 2009. Osberg never saw the Intel Report until this hearing.
  138. In Sagel's notes of September 12, 2008 describing the meeting, he says "Julien shared the report received from the Regina Police which stated that Leigh had been seen publicly, intoxicated, in the company of ex-inmates and known gang members." This information is inaccurate in several respects. The Hulet Document presented was not a report from the Regina Police. It was a document of Hulet's creation. The actual Intel Report spoke to one ex-inmate (Tyrone McNabb) not multiple "ex-inmates" and did not say anything about known gang members.
  139. Hulet's memorandum from the same meeting says, "Copy of information from Regina Police Services presented to Ms. Longman." He also says, "Writer explained that RPS had forwarded this information to my office given the involvement of a Peace Officer employed at RPCC."
  140. Contrary to the Employer's assertion, I am satisfied when Hulet created the Hulet Document, he created it with the intent to present it to Longman and the Union as a report from the Regina Police Service. He intentionally included information alleging Longman had been seen "in the company of known gang member(s)" when the Intel Report contained no such information and when in fact Hulet had no actual evidence that any of the three men who had been with Longman were in fact gang members. The Employer says the information Longman had been seen with known gang member(s) came from the Regina Police Service, but there is no evidence before me to that effect.
  141. Evidence establishes that right until he testified at the hearing, Hulet continued to present the Hulet Document as a Regina Police Service report when he knew in fact it was not and when he knew the Intel Report did not contain any mention of gang members. This impacts significantly on Hulet's credibility.
  142. The Employer says the best evidence of what occurred at the September 12, 2008 meeting is Hulet's memorandum dated September 12, 2008. Counsel says a written record made at the time of the meeting recording what was said at the meeting is more reliable than the unaided memory of any witness.

143. Hulet's September 12 memorandum says Longman said at the meeting that McNabb was her friend. At the hearing she said she "knew of him". The Employer says the written version ought to be preferred. The Employer quotes the following portion of Hulet's memorandum:

How do you know these men?

Ms. Longman explained having met Tyrell and Adrian for the first time that night. She had known Tyrone for about three years as a friend. He is from her First Nations home community... (name?)

144. There are several difficulties/inconsistencies with Hulet's memorandum. McNabb is not from Longman's home community. Sagel's notes of the same meeting say Longman explained she has known McNabb for "3-4 years as she is from a nearby reserve". Longman testified McNabb is not from her home First Nation. Hulet got this information wrong. Sagel's notes say "She clarified that they are 'just friends'." Longman says she did not say Tyrone was her friend. She probably explained she knew him through his sister who was Longman's friend. Longman told Hulet McNabb was from the same community as his sister, not that Tyrone McNabb was from her home community. This makes sense as Longman confirmed at the hearing that she is from one first nation and the McNabb's are from another.
145. Sagel's notes say "Leigh stated she was intoxicated and needed a ride home and they offered to drive her home." Hulet's memorandum says "She asked for a ride home and they obliged."
146. Hulet's memorandum says Longman "had walked over to her friend's house". Longman testified she told Hulet her son had given her a ride to meet a friend which is what happened. Hulet's memorandum says "she asked for a ride home". Longman testified she never said this. She has always been uncertain about whether she asked for a ride home or it was offered.
147. Longman says she did not say she would not give up her friends or her community. She said it would be difficult for her not to associate with people from her community because the fact she wears a uniform doesn't change the fact she is aboriginal. I accept that Longman said what she claims to have said.
148. If Hulet got some of his information wrong, what else may he have gotten wrong? Hulet didn't actually produce his notes, if any, from the meeting. There is no evidence before me as to what he relied on to make his memorandum or indeed how soon after the meeting he made the memorandum. There is also a danger in situations like this that the author of the memorandum, whether consciously or not, may bias their recollection of events in a certain way. The differences between Hulet's notes and Sagel's notes also demonstrate this. Sagel wasn't called to testify.
149. Sometime after the September 12 meeting, Cummings and Hulet discussed the possibility of Longman writing a letter. Cummings says Hulet told him if Longman wrote a letter acknowledging she understood the optics of the situation were not good for the Ministry, that could resolve the matter.

Hulet says he invited Cummings to have Longman write a letter outlining the circumstances of what happened. Longman says when she talked to Hulet he told her to write a letter admitting to her wrongdoing. It seems each of them had a different interpretation of what was to be put into a letter. In the end, Cummings drafted the email, reviewed it with Longman and she sent it to Hulet.

150. In the email, Longman admits it is possible what happened on the evening of August 22 "brought the Ministry into disrepute and pose a possible threat to safety and security...". Then she recognizes the reality that it is sometimes impossible for a First Nations person not to come into contact with people who have been in contact with the criminal justice system. She recognizes it is "incumbent on me to avoid situations where perceptions of wrongdoing exists". She acknowledges this is a challenge for her but one she looks forward to understanding.
151. Hulet said after he received the September 26 email, he recommended termination because he "could not bridge the trust gap" because of Longman's breach. He was afraid there would be some kind of perception that would cause the intelligence information to dry up. Then Hulet said the basis for his recommendation for termination was that Longman hadn't accepted responsibility for her actions of August 22, but because she hadn't done that in the letter, he felt the breach of trust was irreparable. Longman was in violation of a number of policies and she had been in public with known gang members and hadn't reported the incident to her supervisor. He felt it was impossible to employ Longman because she was intoxicated in public with an ex-offender who is a known gang member. He was concerned about RPCC's relationship with RPS. Hulet was worried because it now appeared Longman had known McNabb for a long time. Hulet interpreted Longman's comments in her email as Longman saying Hulet had unreasonable expectations of her in terms of contact with people from her community. There is nothing in Longman's email to even suggest this interpretation could be reasonable.
152. Hulet said he didn't consider less severe discipline because of the nature of the situation, i.e., Longman was intoxicated in the company of ex-offenders, known gang members, in public. The situation opened the Ministry to loss of integrity. Longman had not fully accepted responsibility. Hulet considered there had been a meeting in May where Longman had been reprimanded for the same thing. In his mind this wasn't a first time situation.
153. Hulet says he met with Scriver and "provided her with the information" and Longman's September 26 email. The information provided to Scriver is not before me in this hearing. Hulet didn't remember if he provided Scriver with the Intel Report, but he provided the information he needed to explain his recommendation. There is an email that was circulated (not in evidence), but Hulet didn't prepare a report.

154. Hulet admitted to not investigating what had been done in situations of other breaches of the policies.
155. In all the circumstances, I find Hulet's investigation was not a proper investigation under Employer policy. Among other steps, the supervisor is to set out the evidence available on the alleged misconduct for the employee and ask for the employee's explanation. The "evidence" provided to Longman was the fake Regina Police report.
156. During the interview, Hulet kept saying there was more than he could divulge. Nothing more has ever been divulged. If there really wasn't more, then Hulet was being less than truthful when he said there was more. If there was information that wasn't divulged, then Longman wasn't given the evidence available so she could make a full explanation. Either way, the investigation was seriously flawed in this way.
157. Scriver did not do any independent investigation. She relied on what she received from Hulet which, as I have said, is not in evidence. Scriver kept repeating that peace officers are held to a higher standard. They have to adhere to law and administer law.
158. Scriver's reasons for the termination as deduced from her evidence included:
- When Longman was given an opportunity to explain, the response was "This is going to be what it is going to be. I am not going to make conscious decisions about who I associate with." In Longman's letter she was very flippant and noncommittal saying it would be impossible not to have interaction with people with criminal backgrounds and gang affiliations. Longman said she wouldn't change her relationships and interactions with people of a criminal nature. [As with Hulet's interpretation of Longman's email, Scriver's interpretation strains credulity.]
  - How can a peace officer look after someone in the correctional centre if they are a person of interest on the street? [Longman wasn't a person of interest. The only person of interest identified in the Intel Report was Tyrone McNabb.]
  - "How can we administer the discipline policy when our relationship may be misconstrued or it might muddy our authority?" [Scriver never did explain what this means.]
  - There was a security risk because Longman was associated with a gang member. [There was no proof Tyrone McNabb was a gang member.]
  - Longman breached the Relationship Policy because she had a relationship with an ex-offender and didn't report it and she didn't report the incident of August 22. She needed to report the incident because she was with an ex-offender who was a gang member.



Scriver got the information that McNabb was a gang member from Hulet verbally and by email. The email is not in evidence.

- Longman lacked judgment because she was witnessed by the Regina Police to be intoxicated walking away from a burning car with a gang person who had just got out of the correctional centre, she identified herself as a peace officer and she chose not to report the incident to the RPCC.
- From the information she was given, Scriver concluded Longman was in a relationship with an ex-offender who is a gang member.
- There had been a previous incident where Longman had been asked about whether she had a relationship with this same offender.

159. Scriver said she didn't consider something less than termination or consider re-employment elsewhere in government because:

- There was no sorrow and no remorse.
- Longman didn't report the relationship.
- Longman didn't demonstrate the competencies for the position.
- Longman had four years of service and knew the policies.
- Longman didn't exercise good judgment with her associates.
- Longman put the Ministry into disrepute because of her willingness to "give up" to the Regina Police Service that she is a peace officer. The incident put the Ministry into a compromising position.
- She considered "previous situations of this nature".

160. Scriver did not consider that Longman was First Nations and that it might be difficult for her not to know offenders or ex-offenders. Scriver knew Longman was intoxicated on the night in question. Scriver had not been told Longman was going through a hard time or that she was in family court. Scriver didn't remember if she was told Longman had cried at the September 12 meeting. She doesn't recall anyone telling her Longman said she needed the job.

161. I have noted earlier that the Employer's own policy requires the Employer to explore a series of questions in relation to possible mitigating factors. I will touch on some of these to illustrate the point that the Employer either didn't consider or improperly considered mitigation questions:

- The employee's previous work record is important. Hulet considered the fact McFadyen had asked Longman about a possible relationship with McNabb as being previous discipline to be considered. Scriver also considered the previous incident. There was no previous discipline in this regard and yet this we held against Longman.

- They were to consider whether this was an isolated incident, which it was.
- The employee is to be given the full opportunity to explain their behavior and the explanation is to be investigated. I have already commented on this elsewhere.
- The employer is to investigate whether the behaviour was not fully deliberate. For example, was there emotional strain or personal problems? Handing someone an EFAP pamphlet is not an adequate exploration of whether personal problems were a factor in the situation, especially when the employer knew Longman was intoxicated at the time of the event.
- Scriver never knew of or if she did, never considered the fact Longman had cried at the meeting and said she made a mistake.

162. While mitigating factors only need be considered when a finding of cause for discipline has been made, the Employer here, having decided (albeit without a proper investigation) that discipline was warranted, did not properly consider mitigating circumstances even though their own policy requires them to do so. In light of my findings, I do not intend to analyze the mitigating factors. The point here is that the Employer's failure to properly consider several mitigating factors is another example of the flawed nature of the Employer's chosen process.

163. Scriver said the Deputy Minister did not conduct an independent investigation. The Deputy Minister is provided with an *Action for Approval* document prepared by Human Resources in conjunction with Labour Relations. This document is not in evidence.

164. After the Step 2 meeting, the Employer sent the Union a letter with their decision. While Scriver testified Longman was not terminated because she had been intoxicated, in this letter the author says, "It is also a breach of the *Standards of conduct for Corrections Staff* divisional policy to be publicly intoxicated." Even at the Step 2 level the reasons for termination were something of a moving target.

165. The Union has raised allegations of discrimination and inconsistent application of policy by the Employer. In light of my findings in relation to the Employer's process, I will not examine these allegations in detail. The Employer's approach to the Grievor's case compared to other cases provides cause for concern about the consistency of the Employer's application of policy and in that sense also goes to the issue of fair dealing raised by the Union. Even though Hulet and Scriver both said the Relationship Policy does not prohibit relationships with offenders, it appears some of the people disciplined for breach of policy were disciplined because of the relationship rather than the policy.

166. As regards inconsistency of response, I will touch on some of the cited examples to illustrate the point:

- A female corrections worker caught in a compromising relationship with an inmate (she had some personal problems that clouded her judgment) received a 15 day suspension and was sent to counseling.
- Another female corrections worker caught in a compromising relationship with an inmate was reinstated by an arbitrator.
- A male employee failed to disclose a common law relationship with a woman with whom he had a child. The woman was incarcerated for assaulting the worker. While the woman was incarcerated, the worker went to see the woman at the institution where she was incarcerated. The worker did not report the relationship. The worker received a one day suspension.
- An aboriginal woman who had not reported a two year relationship with an offender was terminated.
- A corrections worker who was drinking and driving, smashed his car into a tree, left the car and went home. The police arrested him for leaving the scene of an accident. The worker was sent to treatment. There was no discipline.
- A worker was stopped at the border, refused to give a breathalyzer and was charged. That worker is still at the RPCC.

167. While there will always be differences in the considerations from case to case, at the time the Employer imposed the discipline on Longman, all they really knew was that she had been intoxicated and had accepted a ride home with three people, one of whom had previously been incarcerated and with respect to whom the RPCC had a gang alert of "affiliate" on their system. Longman had no previous discipline about relationships and even Hulet said he believed her when she said she was only getting a ride home. While I do not need to decide this question, if there had been any proven cause for discipline which is by no means clear, termination of Longman appears to be inconsistent with the Employer's approach to other situations, in particular the one day suspension for the male worker.

168. Taken as a whole, the circumstances of the purported investigation and process leading to termination of Longman's employment is seriously flawed and has within it elements of bad faith:

- The Employer took unsubstantiated hearsay at face value, put their own interpretation onto it and didn't conduct a balanced independent investigation.
- Most significantly, the investigation included creation of a fake document and use of that fake document right up to the arbitration hearing as if it was a Regina Police Service document. Only when he was testifying at the hearing did Hulet explain he had actually created this document. Until

that point he had led Longman and her Union representatives to believe this was an authentic police report.

- The Employer presented the fake document to the Union as the disclosure required by the CBA.
  - Hulet either misrepresented that there was additional information when there was not or withheld information from the Grievor during the investigation process. The only disclosure was the fake document with the real Intel Report only coming forward at the hearing.
  - The Employer did not pursue a thorough investigation, but rather steadfastly stuck to their position Longman was seen in the presence of known gang members without any actual verification this was the case and using the plural “members” when they knew for sure there was only person with possible gang connections. They knew for sure the other two hadn’t been identified even as gang associates. There weren’t any records on anyone other than Tyrone McNabb.
  - The Employer relied on the May 5, 2008 letter as if it was previous discipline for not reporting a relationship with McNabb.
  - The Employer didn’t properly consider mitigating factors as required by their own policy.
  - The Employer, in particular Scriver, put significant emphasis on the fact Longman had told MacLean where she worked. Scriver, quite critically of Longman, said Longman brought the Ministry into disrepute because of her “willingness to give up” to the Regina Police that she was a peace officer. Longman was asked the question and she answered. She didn’t lie. The Employer appears to be suggesting Longman should have refused to answer the officer. The implication is that Longman should have lied to protect the Ministry. This is inappropriate.
169. The Employer’s witnesses repeatedly spoke of the high standard to which corrections workers are held. They spoke of integrity and trust and how even a perception of wrongdoing can impact the Ministry and public confidence. Scriver repeatedly said peace officers are held to a “higher standard”. Unfortunately, the Employer did not hold itself to that same high standard in the manner in which it dealt with Longman. It strains credulity that someone would think it acceptable to fabricate a document and use it in the manner in which it was used in this case. Bad faith conduct has been established.
170. In appropriate circumstances, an arbitrator having found a flawed process will sometimes go on to consider the merits of the case as if the flawed process had not occurred and will decide whether discipline was warranted and whether the penalty was appropriate if discipline was warranted. Here, the Employer’s actions so impacted the proper process under the Discipline Policy that it would now be impossible to go back and recreate what should have happened in any meaningful way.

171. A proper process would have involved a full investigation of the events of August 22, 2008. The Employer never did undertake a full investigation. There is no evidence as to what they would have discovered if they had properly pursued the matter. Would they have totally verified Longman's story about what happened on August 22? Would they have discovered McNabb really was or wasn't a gang member? Would they have established the precise extent of Longman's social, albeit not romantic relationship with McNabb? Would they have discovered Longman's drinking was an issue that required some sort of accommodation? These questions and many more would certainly have been part of a proper investigation. Instead, the Employer blindly took the position it did and used a fabricated document to support its position.
172. The question now is what should be the consequences of the Employer's actions. Because the investigation was tainted in the several ways I have pointed out and that investigation led directly to termination of Longman's employment, the entire process is flawed and the termination should be set aside. The consequence of the Employer's failure to follow process including the fabrication of the document is that the entire process is null and void and Longman's termination should be set aside as if it never occurred. To be clear, the Employer cannot now go back to recreate what it should have done in the first place.
173. In light of my findings, it is not necessary for me to consider the other questions raised by the parties.

#### **IX. Conclusion**

174. The Employer has not established good and sufficient cause for dismissal of Longman as required by Article 20.2 of the CBA. The Employer's process was seriously flawed, had within it elements of bad faith and amount to a breach of the CBA.
175. I wish to make it clear that in making this decision I am quite mindful of and do not in any way intend to downplay the importance of safety, security, integrity and public confidence in the corrections setting. Corrections workers are held to a high standard of conduct, with or without policy to that effect. Relationships with inmates or ex-offenders can compromise or give the appearance of compromising security, safety and public confidence. The Employer's legitimate interest, however, in security, safety and public confidence, does not permit the Employer to fall below its own standards and use illegitimate means in conducting their business. To permit that would be to permit the Employer to avoid adhering to the high standards of integrity the Employer expects of its employees. Use of fabricated documents reflects on the integrity and credibility of the Employer and cannot be countenanced. Otherwise, there will be an unacceptable double standard.
176. The consequences of the flawed process and bad faith conduct are:
1. The Grievance is upheld and the Grievor's dismissal is set aside.

2. The Employer shall reinstate the Grievor, Leigh Longman, to her position as a Corrections Worker, with the seniority she would have earned had she had not been dismissed.
3. Recognizing the length of time Longman has been away from the workplace, Longman shall be reinstated as soon as mutually convenient, but in any event no later than 120 days from the date of this Award.
4. The Employer shall provide the Grievor with compensation for lost wages and benefits, and any other appropriately proven losses flowing from the breach.
5. In accordance with the request of the parties, if they are unable to agree on the monetary consequences of this Award or any other matter in relation to remedy arising from this Award, then I will remain seized of this matter to deal with those outstanding matters. In the event the parties are unable to agree, then I will reconvene the arbitration at a convenient date on ten days' notice from either party.

Dated February 13, 2013.



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Anne M. Wallace, Q.C.  
Arbitrator